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Pennsylvania Food Laws

Including a Brief Digest of Court Decisions
on Food Regulation.

BUREAU OF FOODS AND CHEMISTRY

JAMES W. KELLOGG,

Director—Chief Chemist



JOHN A. MCSPARRAN, *Secretary of Agriculture*

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Pennsylvania Food Laws

LETTER OF TRANSMITTAL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
BUREAU OF FOODS AND CHEMISTRY

Harrisburg, Pa., September 1, 1931

Hon. John A. McSparran
Secretary of Agriculture
Harrisburg, Pennsylvania

Dear Sir:

I have the honor to transmit herewith for your approval a compilation of the Food Laws charged to the Bureau of Foods and Chemistry for enforcement, together with a brief digest of court decisions on certain of these laws.

A knowledge on the part of manufacturers and the public of the requirements of Food Laws is effective and important in obtaining compliance with the requirements and as requests for copies of these laws and decisions are being continually received, as several of the laws were amended by the 1931 session of the Legislature and as our supply of the previous law bulletin is exhausted, it would be of great advantage to publish these laws and decisions. Therefore, it is recommended that they be published in bulletin form for distribution to food manufacturers and consumers, as well as for the information of the public.

The Administrative Code brought all laws directly under the supervision of the Department of Agriculture for enforcement. Therefore, in those laws in which the words "Dairy and Food Commissioner" and "Director of Bureau of Foods" occur they should be read as "Department of Agriculture" and also in those acts where certain fines and fees are shown to be paid to the Department for enforcement purposes they should be read as requiring the moneys to be transmitted to the Department of Revenue for payment to the State Treasurer in order to be in harmony with the requirements of the Administrative Code.

Very respectfully yours

JAMES W. KELLOGG
Director—Chief Chemist

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GENERAL FOOD LAW

Act of May 13, 1909, No. 292, P. L. 520, as amended April 26, 1923, No. 63, P. L. 85.

AN ACT

Relating to food; defining food; providing for the protection of the public health, and the prevention of fraud and deception, by prohibiting the manufacture or sale, the offering for sale or exposing for sale, or the having in possession with intent to sell, of adulterated, misbranded, or deleterious foods; prescribing certain duties of the Dairy and Food Commissioner in reference thereto; and providing penalties for the violation thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, copartnership, limited partnership, joint-stock company, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of food which is adulterated or misbranded within the meaning of this act.

Section 2. That the term "Food," as used in this act, shall include not only every article used for food by man, but also every article used for, or entering into the composition of, or intended for use as an ingredient in the preparation of, food for man.

That the term "Person," as used in this act, shall include individuals, firms, copartnerships, limited partnerships, joint-stock companies, and bodies corporate, as well as all officers, agents, servants, employes, or others acting for any of the same, and shall be taken as applying in the singular or plural as the case may require.

Section 3. That for the purpose of this act, an article of food shall be deemed to be adulterated:

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality, strength, or purity.

Second. If any substance has been substituted, wholly or in part, for the article.

Third. If any valuable constituent of the article has been, wholly or in part, abstracted.

Fourth. If it be mixed, colored or changed in color, coated, polished, powdered, stained, or bleached, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or if by any means, it is made to appear better or of greater value than it is.

Fifth. If it contains any added sulphurous acid, sulphur dioxide, or sulphites, benzoic acid or benzoates, except as hereafter provided; or if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, alum, compounds of copper, betanaphthol, hydronaphthol, abrastol, asaprol, pyroligneous acid, or other added ingredients deleterious to health; or if, in the case of confectionery, it contains any of the substances mentioned in this para-

graph, or any mineral substance, or injurious color or flavor, alcoholic liquor, or any other ingredients not herein mentioned, deleterious to health: Providing, That this act shall not be construed to prohibit the use of harmless colors of any kind, in confectionery, when used for coloring, and not for any fraudulent purpose: And provided further, That nothing in this act shall be construed to prohibit the use of common salt, sugar, pure corn syrup, pure glucose, wine vinegar, cider vinegar, malt vinegar, sugar vinegar, glucose vinegar, distilled vinegar, spices or their essential oils, alcohol (except in confectionery), edible oils, edible fats, wood smoke applied directly as generated, or proper refrigeration. And provided further, That in the manufacture of confectionery the use of alcohol shall be permitted as it may be found in customary alcoholic tinctures or extracts used for flavoring purposes only, and as a solvent for glazes, and that oil of sweet birch, or methyl-salicylic ester, may be used as a substitute for oil of wintergreen as a flavor: And provided further, That in the preparation of dried fruits and molasses, sulphur dioxide either free or in simple combination, may be used in such quantities as will not render said dried fruits or molasses deleterious to health; and that sodium benzoate may be used in the preparation of those articles of food in which it has heretofore been generally used, in quantities not exceeding one-tenth (1-10) of one per centum, or benzoic acid, equivalent thereto: And provided further, That when any quantity of sodium benzoate is used in any article of food, or any quantity of sulphur dioxide is used in the preparation of dried fruits or molasses, the fact that sodium benzoate or sulphur dioxide has been used in the preparation thereof shall be plainly stated on each package of such food.

Sixth. If it consists of, or is manufactured in whole or in part from, a diseased, contaminated, filthy, or decomposed substance, either animal or vegetable; or an animal or vegetable substance produced, stored, transported, or kept in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter.

Section 4. That for the purpose of this act, an article shall be deemed misbranded,—

First. If it be an imitation of, or offered for sale under, the name of another article.

Second. If it be labeled or branded so that it may deceive or mislead the purchaser; or purport to be a foreign product, when not so; or if the contents of the package as originally put up shall have been removed, in whole or in part, and other inferior contents shall have been placed in such package.

Third. If the package containing it, or its label, shall bear any statement, design, or device, regarding the substances or ingredients contained therein, which statement, design, or device shall be false or misleading in any particular.

Fourth. If it be a mixture or compound which may be known, or from time to time hereafter known, as an article of food, unless it be accompanied on the label or brand with a statement that it is a mixture or compound and a statement of the substance entering into said

mixture or compound. All labeling of packages required by this act shall be on the main label of each package, and in type not less than eight point, brevier caps, in size,—unless the size of the package will not permit the use of eight-point cap type, in which case the size of the type may be reduced proportionately,—and in such position and terms as may be plainly seen and read by the purchaser: Provided, That nothing in this act shall be construed as requiring or compelling the proprietors, manufacturers, or sellers of proprietary foods to disclose their trade formulas, except in so far as may be necessary under the provisions of this act to avoid adulteration, imitation, or misbranding.

Section 5. When the Dairy and Food Commissioner, or his agent shall obtain an article of food, or a sample or portion thereof, from any person, for the purpose of determining whether the same is adulterated or misbranded within the meaning of this act, and it shall be found that the said article of food is adulterated or misbranded within the meaning of this act, then the Dairy and Food Commissioner shall proceed against the said person, from whose store, warehouse, or other place of business said article, sample, or portion thereof, shall have been obtained, for a violation of the provisions of this act.

But no prosecution shall be sustained, under the provisions of this act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded article of food, as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded within the meaning of this act, designating it.

Said guaranty to afford protection shall contain the name and address of the manufacturer or wholesale dealer, or jobber or distributor, making the sale of such articles of food to such retailer, and in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines and other penalties which would attach, in due course, to the retailer holding such guaranty under the provisions of this act, for a violation hereof; and every manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this act shall be held responsible, and shall be proceeded against for the adulteration or misbranding of any article of food sold under said guaranty, and shall be subject to the penalties for the violation of the provisions of this act. No such guaranty shall operate as a defense to a prosecution for a violation of the provisions of this act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this act.

But if said person shall violate the provisions of paragraph six, section three of this act, by having stored or transported or kept said article, in said paragraph mentioned, in a way or manner to render it diseased, contaminated, or unwholesome, said person shall be proceeded against for violation of the provisions of this act; and it shall not be

necessary for conviction that any article, sample, or portion thereof, shall be obtained by the Dairy and Food Commissioner, or his agent, as a condition precedent to prosecution.

Section 6. For the purpose of this act, an article shall be deemed to be the same article:

First. When it shall be of the same brand, or have thereon the same label, and shall be adulterated or misbranded in the same way.

Second. When it is not labeled or branded, but is sold, offered for sale, or exposed for sale under the same name, and adulterated or misbranded in the same way.

Third. When, although sold, offered for sale, or exposed for sale under another name, or labeled or branded in a different way, it shall be found to be the product of the same manufacturer, grower, or maker, and to be adulterated or misbranded in the same way: Provided, however, That an article shall be deemed to be adulterated in the same way if it shall contain the same adulterant substance or substances.

Section 7. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than sixty dollars nor more than one hundred dollars.

Section 8. The Dairy and Food Commissioner of the State shall be charged with the enforcement of the provisions of this act and shall make rules and regulations for the proper enforcement thereof, and shall cause such rules and regulations to be published in the official bulletin in the issue immediately following the preparation of the same.

Section 9. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by the Dairy and Food Commissioner be paid into the State Treasury, for the use of the Commonwealth.

Section 10. The following acts of Assembly: namely,—An act, entitled “An act to provide against the adulteration of food, and providing for the enforcement thereof,” approved the twenty-sixth day of June, Anno Domini one thousand eight hundred and ninety-five:

And an act, entitled “An act for the protection of public health, by prohibiting the manufacture and sale, offering for sale, or having in possession with intent to sell, within the State, of adulterated, misbranded, poisonous, or deleterious foods and confections; regulating the enforcement of the provisions hereof; providing for the protection of persons buying and selling adulterated or misbranded foods and confections under a guaranty; and providing penalties for the violation thereof,” approved the first day of June, Anno Domini one thousand nine hundred and seven,—be, and the same are hereby repealed.

Provided, nevertheless, That this act shall not apply to, nor in any way affect,—

An act entitled “An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,” approved

the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven:

And the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,'" approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the act, entitled "An act to prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining-rooms and boarding-houses, for the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure," approved the twenty-ninth day of May, Anno Domini one thousand nine hundred and one;

Nor the act, entitled "An act defining boiled or process butter; designating the name by which it shall be known; providing for the licensing of manufacturers and dealers therein, and regulating the sale and labeling of the same so as to prevent fraud and deception in its sale; providing punishment for violations of this act, the methods of procedure for its enforcement, and certain matters of evidence in such procedure," approved the tenth day of July, Anno Domini one thousand nine hundred and one;

Nor the act, entitled "An act to prohibit the selling, shipping, consigning, offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish or shell-fish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor, and to prescribe penalties and punishment for violations, and the means and the methods of procedure for the enforcement thereof," approved the twenty-eighth day of March, Anno Domini one thousand nine hundred and five;

Nor the act, entitled "An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same, providing for the enforcement thereof, and punishment for the violation of the same," approved the eighteenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the amendment thereto approved the twenty-first day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first and second sections of an act, entitled 'An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same; providing for the enforcement thereof, and the punishment for the violation of the same,'" approved the eighteenth day of June,

Anno Domini one thousand eight hundred and ninety-seven, so as to provide that vinegar made wholly from grapes, apples, or other fruits shall not be required to contain an acidity of four per centum;"

Nor the act, entitled "An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marking and branding the same; providing for the enforcement of this act; prescribing penalties for its violation," approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;

And the amendment thereto, approved the second day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend section two of an act, entitled 'An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marking and branding the same; providing for the enforcement of this act; prescribing penalties for its violation,' approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;"

Nor the act, entitled "An act regulating the manufacture or sale of fruit syrups; providing for the enforcement thereof; and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," approved the twenty-sixth day of April, Anno Domini one thousand nine hundred and five:—

All of which acts shall remain in full force.

APPROVED—The 13th day of May, A. D. 1909.

BUTTER LAW

Act of April 13, 1921, No. 78, P. L. 129.

AN ACT

Providing for the protection of the public health and the prevention of fraud and deception by prohibiting the manufacture, the sale, the offering for sale, or exposing for sale, or the having in possession with intent to sell, of adulterated or deleterious butter; defining butter; and prescribing the penalty for the violation thereof.

Section 1. Be it enacted &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself, or themselves, or by his, her its, or their agents, servants, or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, butter which is adulterated within the meaning of this act.

Section 2. Butter, for the purposes of this act, shall be deemed to be the fatty product obtained from milk or cream by the usual processes of churning and working, with or without the addition of salt.

Section 3. Butter shall be deemed to be adulterated within the meaning of this act:

First. If it contains more than sixteen (16) per centum by weight of water or less than eighty (80) per centum by weight of butter fat.

Second. If it contains any foreign fat, starchy matter, or other substance which injuriously affects its quality or purity.

Section 4. That any persons who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (\$100) dollars nor more than two hundred (\$200) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or both or either, at the discretion of the court.

Section 5. That the Director of the Bureau of Foods shall be charged with the enforcement of the provisions of this act.

Section 6. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State Treasury for the use of the Commonwealth.

APPROVED—The 13th day of April, A. D. 1921.

RENOVATED OR PROCESS BUTTER LAW

Act of July 10, 1901, No. 327, P. L. 643.

AN ACT

Defining boiled or process butter; designating the name by which it shall be known; providing for the licensing of manufacturers and dealers therein, and regulating the sale and labeling of the same so as to prevent fraud and deception in its sale; providing punishment for violations of this act, the methods of procedure for its enforcement, and certain matters of evidence in such procedure.

Section 1. Be it enacted, &c., That for the purposes of this act certain food products, usually known as "boiled" or "process" butter, produced by taking original packing stock and other butter and melting the same so that the butter oil can be drawn off, mixed with milk or skimmed milk or other material, and by emulsion or other process, produce butter, and butter produced by any similar process, and commonly known as "boiled" or "process" butter; and which "boiled" or "process" butter for the purpose of this act shall be known and designated as "renovated butter."

Section 2. Every person, firm or corporation, and every agent of such person, firm or corporation, who shall desire to engage in the business of manufacturing or selling "renovated butter," shall first make application to the Department of Agriculture for a license, authorizing him, her or them to engage in the manufacture or sale of "renovated butter," and such application for license shall be in such form as shall be prescribed by the Department of Agriculture through its agent, the Dairy and Food Commissioner; which application, in addition to other

matters which may be required to be stated therein by the said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business, which name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on; and if the said application is satisfactory to the said Dairy and Food Commissioner, he shall issue to the applicant or applicants a license, authorizing him, her or them to engage in the manufacture or sale of "Renovated Butter," for which said license the applicant or applicants shall first pay, annually, the following sum: if a manufacturer, the annual sum of one thousand (\$1,000) dollars; if a wholesale dealer, the annual sum of five hundred (\$500) dollars; if a retailer, the annual sum of one hundred (\$100) dollars; if a restaurant keeper or dining-room proprietor or a hotel proprietor, the annual sum of fifty (\$50) dollars; if a boarding-house keeper, the annual sum of ten (\$10) dollars; and the said license fees, when received by the said Dairy and Food Commissioner or his agent, shall be by him immediately paid into the State Treasury. All licenses under this act shall expire the thirty-first day of December of each year, but licenses may be granted to begin on the first of any month for the remainder of a year, upon the payment of a proportionate part of the annual license fee. Wholesale dealers, within the meaning of this act, shall be all persons, firms or corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms and corporations who make sales in quantities of ten pounds and over at any time. An agent of a manufacturer located outside of the State, and taking orders within this State for such "Renovated Butter," to be delivered from the factory or from a storage-house, or from one place of business to another within this State, shall be, within the meaning of this act, a wholesale dealer. And retail dealers shall be all persons, firms or corporations who sell in quantities of less than ten pounds. Every restaurant keeper or dining-room proprietor or hotel proprietor or boarding-house keeper, who furnishes "Renovated Butter" as part of the meal served to customers or guests shall be regarded as a dealer in "Renovated Butter." Such license may be transferred by the Dairy and Food Commissioner, upon the application in writing of the person, firm or corporation to which the same has been granted, provided the transferee shall comply with the provisions of this act and with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer. Such license shall not authorize the manufacture or sale, exposing for sale or having in possession with intent to sell, "Renovated Butter" at any place other than that designated in the application and license. The license, procured as aforesaid, shall be hung up in a conspicuous place, in the place of business, room or store where such "Renovated Butter" is authorized to be sold.

Section 3. That no person, firm or corporation shall sell or offer or expose for sale, or have in his, her or their possession with intent to sell, any "Renovated Butter" from a wagon or other vehicle, or upon the public streets or roads, or from house to house.

Section 4. Every person, firm or corporation who shall obtain a license for the manufacture or sale of "Renovated Butter" shall also be required, before engaging in such manufacturing or sale, to procure from the Dairy and Food Commissioner a sign or signs, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said sign or signs shall clearly set forth that he, she or they are engaged in the manufacture or sale of "Renovated Butter," and which sign or signs when procured shall be hung up in a conspicuous place or places, on the walls of each room or store or place of business in which "Renovated Butter" is manufactured or sold; and in addition to such sign or signs, so hung up as aforesaid, every restaurant keeper or dining-room proprietor, or hotel proprietor or boarding-house keeper, shall also have conspicuously placed upon every counter or table, at which food, meals or refreshments are served to customers, a placard, plainly printed in letters not less than one-half inch in length, stating that "Renovated Butter" is used and served to customers. Every person, firm or corporation who shall obtain a license as a manufacturer or wholesale dealer, for the manufacture or sale of "Renovated Butter," shall also be required, before engaging in such manufacture or sale, to procure from the Dairy and Food Commissioner a stencil, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said stencil shall designate the number of said license and the name and address of the holder thereof; which said stencil shall be used by the manufacturer or wholesale dealer, and said stencil brand shall be placed on each and every package, before being sold by the manufacturer or wholesale dealer to the retailer. If any package of "Renovated Butter" shall be found in the possession of any manufacturer or wholesale dealer or retail dealer without the said stencil brand being found theron, such package shall be seized by the Dairy and Food Commissioner or by any of his agents, and said package shall be forfeited, and shall be sold by the Dairy and Food Commissioner or his agents, and the proceeds thereof paid to the State Treasurer, for the use of the Department of Agriculture.

Section 5. It shall be unlawful for any person, firm or corporation, or any agent thereof, to sell, or offer or expose for sale, or have in his, her or their possession with intent to sell, any "Renovated Butter," not marked and distinguished on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the words "Renovated Butter;" and such placard shall be printed in plain, uncensed Gothic letters, not less than one-half inch long, and such placards shall not contain any other words, printing or device thereon; and also upon every open tub, package or parcel, containing such "Renovated Butter," there shall be displayed in the same manner, in a conspicuous place, a placard with the words "Renovated Butter" printed thereon, in the same form as above described in this section, and when "Renovated Butter" is sold from such package, and otherwise, at retail, in print, roll or other form, before being delivered to the purchaser it shall be wrapped in wrappers, plainly stamped on the outside thereof with the words "Renovated Butter," printed or stamped thereon in letters one-quarter of an inch square, and such wrapper shall

contain no other words or printing thereon; and the said words "Renovated Butter," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at time of purchase.

Section 6. Every person, firm or corporation who shall have obtained a license, and be engaged in the business of manufacturer or wholesale dealer in "Renovated Butter," shall keep a book, in which shall be entered accurately every sale and shipment, the quantity and person to whom sold and shipped, the place to which shipped, and the name of the transportation line by which shipped; which said book shall be always open to the inspection of the Dairy and Food Commissioner, or his agents, attorneys and representatives. Every retail dealer in "Renovated Butter" shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, or his agents, attorneys and representatives, in which said book shall be entered the date of the receipt for all purchases of "Renovated Butter" made by such retail dealer, stating therein where and from whom purchased, and the quantity so purchased.

Section 7. Every person, firm or corporation, and every agent of such person, firm or corporation, who shall manufacture, sell or offer or expose for sale, or have in his, her or their possession with intent to sell, "Renovated Butter," in violation of any of the provisions of this act, or who shall in any other respects violate any of the provisions of this act, shall for every offense forfeit and pay the sum of one hundred (\$100) dollars, which shall be recoverable with the costs, including the expense of the inspection and analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen, throughout this Commonwealth, shall have jurisdiction to hear and determine all actions for recovery of penalties for violations of the provisions of this act, with the right of appeal in either party to the court of common pleas, as provided in existing laws in suits for penalties; and all penalties and costs imposed and recovered under the provisions of this act, shall be paid to the Dairy and Food Commissioner or his agents, and by him immediately covered into the State Treasury, to be paid out and used as hereinafter provided.

Section 8. In addition to the above penalty, every person, firm or corporation, and every agent of such person, firm or corporation, who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction shall be punished for the first offense by a fine of not less than one hundred (\$100) dollars, nor more than three hundred (\$300) dollars, or by imprisonment in the county jail for not more than thirty (30) days, or both, at the discretion of the court; and for the second offense, by a fine of not less than three hundred (\$300) dollars and not exceeding five hundred (\$500) dollars, and imprisonment not exceeding two (2) years.

Section 9. In any proceeding under this act, either for the collection of a penalty or prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by justices

of the peace, aldermen and courts of record as evidence of the granting of a license to manufacture or sell "Renovated Butter," or of the fact that no such license has been granted to any particular person, firm or corporation.

Section 10. Whenever a suit for collection of a penalty, under the provisions of this act, shall be appealed to any court of record, or whenever any prosecution for a misdemeanor, on account of any violation of the provisions of this act, has been returned to any court of quarter sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys, in case the person or persons who have been sued for such penalty or prosecuted for such misdemeanor have, since the commencement of such suit or prosecution, again violated any of the provisions of this act to apply to the court having jurisdiction of such appeal or of such prosecution, or to any law judge thereof, by petition setting forth the facts and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecutions shall have been finally decided and determined; and thereupon the said court, or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper and after inquiring into the facts alleged in said petition shall, if satisfied that any violation of the provisions of this act has been committed by such person or persons since the commencement of said suit or prosecution, make an order, commanding and restraining the said person or persons from any further violations of the provisions of this act, until such time as the said suit or prosecution shall have been finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which said suit had been so brought, or has been duly convicted of a misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons from the further violation of the provisions of this act, continuing and permanent; and any violation by any person or persons of any restraining order of such court or judge, whether the restraining order shall be made during the pendency of a suit for penalty, or of a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order. And the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the courts of common pleas of this Commonwealth sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order, and the cost of the application and subsequent proceedings thereon shall be in the discretion of the court.

Section 11. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agents or attorneys, or by any citizen of this Commonwealth, to make report to the court of quarter

sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person, so giving notice as aforesaid to said constable, to have violated any of the provisions of this act, and of the names of all witnesses furnished to said constable, whose testimony it is alleged will sustain or prove the fact of such violation. And it shall be the duty of the judge of the said court to make inquiry of all constables, at the time of the making of their quarterly returns to the court of quarter sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whenever such quarterly report shall contain the name of any person alleged to have violated the provisions of this act, together with the names of witnesses to prove such violations, as also the name of the person giving notice to the constable, as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring in the person so charged, to answer the matters alleged in such indictment, and thereupon proceed to trial as speedily as possible, according to the course of practice in the said court of quarter sessions.

Section 12. The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor, in accordance with the provisions of this act, and may prosecute to final judgment any suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution immediately upon the commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced, and shall in like manner report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen, as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceeding and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs, as fixed by law, in said proceeding.

Section 13. The money paid into the treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law, and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General; subject, however, to the payment to any citizen com-

mencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State Treasury.

Section 14. The Dairy and Food Commissioner, his assistants, agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all places of business, factories and farm buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof; and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, "Renovated Butter," which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act; and they shall also have power to take from such package, can or vessel, samples for analysis, upon paying or tendering the value of such samples.

Section 15. The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and distributed; which semi-annual bulletin shall contain the name and address of every person, firm or corporation to whom a license has been issued for the manufacture or sale of "Renovated Butter" and also a tabulated statement of all the actions, civil or criminal, which have been brought for the violations of this act; giving the name and address of the defendant and the disposition of every case.

Section 16. All parts of the act approved the fourth day of May, Anno Domini one thousand eight hundred and ninety-nine, entitled "An act to regulate the sale of butter, produced by taking original packing stock and other butter and melting the same so that the butter oil can be drawn off, mixed with skimmed milk or other material, and by emulsion or other process produce butter, and butter produced by any similar process, and commonly known as 'Boiled' or 'Process' butter; providing for the enforcement thereof, and punishment for the violation of the same;" inconsistent with this act, are hereby repealed.

APPROVED—The 10th day of July A. D. 1901.

CARBONATED BEVERAGES AND STILL DRINKS LAW

Act of May 14, 1925, No. 399, P. L. 730, as amended May 6, 1927, and June 22, 1931, No. 226.

AN ACT

For the protection of the public health in the manufacture and sale of carbonated beverages and still drink; providing for the registration thereof; prohibiting the sale, offering or exposing for sale, exchange or giving away thereof in certain cases unless registered; regulating the manufacture, bottling, preparation, mixing, and compounding of carbonated beverages or still drinks, and the sale and dispensing thereof; creating a special fund in the State Treasury; and providing penalties.

Section 1. Be it enacted, &c., That the term "carbonated bever-

ages" or "still drinks," as used in this act shall include all carbonated beverages or still drinks, fruit juices, and mineral waters when ready for use as a beverage, whether still or carbonated, and whether simple, mixed or compounded. The term shall not include natural apple cider, unfermented grape juice, cereal beverages, or carbonated beverages or still drinks made in imitation of beer, bitter drinks, or other similar beverages.

The word "person" shall include individuals, associations, copartnerships, and corporations.

The singular shall include the plural; the masculine shall include the feminine and neuter. (Section 1, as amended May 6, 1927.)

Section 2. It is unlawful for any person to sell, offer, or expose for sale or exchange or give away any carbonated beverage or still drink except such as is manufactured, prepared, mixed, or compounded by himself unless the same has been registered with the Department of Agriculture.

Section 3. Any person, whether a resident or non-resident of this Commonwealth, manufacturing or bottling any carbonated beverages or still drinks shall register such beverages with the Department of Agriculture by filing an application for such purpose on a form to be prescribed by the Department of Agriculture. Such application shall state (a) the name and address of the applicant, (b) the location of his manufacturing or bottling plant, (c) the name of each beverage to be registered, and (d) such other information as may be required by the Department of Agriculture. The application shall be accompanied by a fee of fifty dollars. The Department of Agriculture shall issue to each applicant a certificate of registration for all carbonated beverages or still drinks manufactured or bottled by him. Such registration shall expire one year from the issuance thereof unless renewed annually by the payment of a fee of fifty dollars.

The Department of Agriculture may revoke any registration whenever it is determined by it that any of the provisions of this act or of any other act relating to carbonated beverages or still drinks have been violated.

Section 4. It is unlawful for any person to label, mark, or cap any carbonated beverage or still drink which has not been registered under this act, so as in any way to indicate that such beverage has been so registered.

It is unlawful for any person other than a person holding a certificate of registration to use for the purpose of holding any carbonated beverages or still drinks any container, label, or cap bearing any registration mark.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding one thousand dollars.

Section 5. No carbonated beverages or still drinks shall be made except from syrup containing pure cane or beet sugar and pure flavoring materials with or without added fruit acids and with or without added color. Such carbonated beverages or still drinks shall contain not less than eight per centum sugar by weight. The provisions of this

section, with respect to the amount of sugar required, shall not apply to ginger ale or to non-alcoholic fruit juices. This section does not prohibit the use of caramel colors or any other harmless ingredient, and nothing but harmless, certified, approved, artificial coal-tar dye products and colors shall be used.

All carbonated beverages or still drinks shall be deemed to be adulterated which are not in compliance with the provisions of this section, or which contain any of the ingredients prohibited by section three of the act, approved the eleventh day of March, one thousand nine hundred and nine (Pamphlet Laws, fifteen), entitled "An act relating to non-alcoholic drinks; defining the same; and prohibiting the manufacture, sale, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded non-alcoholic drinks; and providing penalties for the violation thereof, and providing for the enforcement thereof," or which contain hydrogen peroxide or peroxides or perborates or benzoate of soda or benzoates or any other substance deleterious to health: Provided, that carbonated beverages and still drinks may contain not in excess of one-tenth (1-10) of one per centum of benzoate of soda or benzoates, provided the bottles or other containers are labeled, or in the case of bulk drinks, suitable display cards are printed to show that the said drinks contain not in excess of one-tenth (1-10) of one per centum of benzoate of soda or benzoates.

The Secretary of Agriculture is hereby authorized to adopt and issue rules and regulations for the proper enforcement of this act and for the protection of the public health. (Section 5, as amended May 6, 1927.)

Section 6. Whenever artificial colors or flavors are used in the manufacture of carbonated beverages or still drinks the bottle or other container shall be distinctly marked, labeled, or capped "artificially colored," "artificially flavored," or "artificially colored and flavored," as the case may be. All cider, fruit-ades, fruit juices, or other similar beverages made in imitation of the natural product shall be distinctly marked, labeled, or capped with the word "imitation," followed by the name of the natural product imitated.

All carbonated beverages, or still drinks containing artificial flavor or artificial color of any character and sold from bulk shall be so labeled or marked on the container from which it is sold.

Section 7. Display cards, printed and marked with the information required by section six of this act, shall be prominently displayed on all stands, booths, or other places where any carbonated beverages or still drinks are sold from bulk. Such display cards shall be printed in letters not less than two inches long and three fourths of an inch in width and shall bear the inscription: "Artificially colored," "artificially flavored," "artificially colored and flavored," or "imitation" as the case may be. (Section 7, as amended May 6, 1927.)

Section 8. Every bottle filled with carbonated beverages or still drinks shall be distinctly marked, labeled, or capped so as to show the true name of the carbonated beverage or still drinks contained therein.

Section 9. All bottles used for bottling carbonated beverages or still drinks, before being filled, shall be cleansed by soaking in a hot

caustic solution of not less than one hundred and ten degrees Fahrenheit and that shall contain not less than three per centum caustic or alkali expressed in terms of sodium hydrate or its equivalent in cleansing and germicidal effectiveness, for a period of not less than five minutes, then thoroughly rinsed in pure water. The cleansing solution shall be changed frequently, so as to prevent its becoming foul and unsanitary. (Section 9, as amended June 22, 1931.)

Section 10. No bottles shall be used in the manufacturing or bottling of carbonated beverages or still drinks in which the metal or rubber parts of the stopper come in contact with the beverage or drink. The provisions of this section shall not apply to carbonated water put in syphons.

Section 11. It is unlawful for any person to use any containers used in the manufacture, bottling, or distribution of carbonated beverages or still drinks for any other purpose.

Section 12. All carbonated beverages or still drinks shall be drawn from closed containers or served from individual bottles.

Section 13. All carbonated beverages or still drinks manufactured, sold, or offered for sale at or tributary to fair grounds, carnivals, circus grounds, parks, resorts and all other places within the State, shall be made from pure cane or beet sugar and in compliance with the provisions of the non-alcoholic drink laws of Pennsylvania.

Section 14. All coolers and other containers of any description whatsoever from which carbonated beverages or still drinks are sold or dispensed at or adjacent to fair grounds, carnivals, circus grounds, parks, resorts and all other places within the State, shall have proper display cards as provided by section seven of this act.

Section 15. No carbonated beverages or still drinks shall be sold or offered for sale from bulk which has been kept cool by the addition of ice.

Section 16. It is unlawful for any person to display any press at any place where carbonated beverages or still drinks are being sold or dispensed unless such press is actually used in the production of the carbonated beverages or still drinks being sold or dispensed from bulk as such place and time.

Section 17. No carbonated beverages or still drinks shall be mixed or compounded in tin, galvanized iron, or wood pails, tubs, or barrels.

Section 18. The Department of Agriculture shall have charge of the enforcement of this act.

The Secretary of Agriculture shall appoint four special agents with experience to enforce the provisions of this act and such additional agents as may be necessary to keep supervision over the non-alcoholic drinks industry, as provided for by this act, and shall fix the compensation of such special agents and shall allow them necessary traveling expenses.

Section 19. All licenses, all registration fees, and fines paid or recovered under the provisions of this act, shall be paid by the justice of

the peace or court official to the Secretary of Agriculture, and shall be paid by him into the State Treasury. Such moneys shall constitute a special fund and are hereby permanently appropriated to the Department of Agriculture for the purpose of enforcing the provisions of this act, and may be drawn out upon warrants signed by the Secretary of Agriculture, approved by the Auditor General.

All moneys remaining in such fund on the first day of June of each year shall be paid over into the general fund of the State Treasury.

Section 20. Any person violating any of the provisions of this act, excepting section four thereof, or interfering with, or refusing to give access to, the Secretary of Agriculture or any of his agents or assistants, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than ninety (90) days, or both.

Section 21. The provisions of this act, with respect to registration, shall not apply to drinks sold or dispensed from soda fountains nor to social, fraternal, charitable, educational, religious, or beneficial organizations. This act shall take effect sixty (60) days after the date of its approval. (Section 21, as amended May 6, 1927.)

Section 22. This act does not repeal or in any wise affect any of the provisions of any act of this Commonwealth relating to intoxicating liquors nor any of the provisions of the act, approved the eleventh day of March, one thousand nine hundred and nine (Pamphlet Laws, fifteen), entitled "An act relating to non-alcoholic drinks; defining the same; and prohibiting the manufacture, sale, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded non-alcoholic drinks; and providing penalties for the violation thereof, and providing for the enforcement thereof," or the act approved the tenth day of May, one thousand nine hundred and twenty-one (Pamphlet Laws, four hundred sixty-eight), entitled "An act for the protection of the public health by providing clean, sanitary establishments for bottling non-alcoholic drinks, including clean, sanitary ingredients, bottles, receptacles and utensils; and providing penalties for the enforcement thereof," or any of their supplements or amendments.

Section 23. All acts and parts of acts inconsistent with this act are hereby repealed.

APPROVED—The 14th day of May, A. D. 1925.

CHEESE LAW

Act of June 23, 1897, No. 164, P. L. 202, as amended May 2, 1901, No. 95, P. L. 128.

AN ACT

To prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese, providing rules

and regulations for marking and branding the same, providing for the enforcement of this act, prescribing penalties for its violation.

Section 1. Be it enacted, &c., That no person, firm or corporate body shall manufacture, sell, or offer for sale or have in his or their possession with intent to sell, any cheese not the legitimate product of pure, unadulterated milk or cream, or any cheese into which any foreign fats or substances have been introduced as may appear upon proper test.

Section 2. All cheese manufactured or sold within this Commonwealth shall be divided into five grades, and shall be branded, or stenciled in ordinary bold-face capital letters, not less than one-half inch in height, on one side of each cheese, and upon one side of the box or case containing the cheese, the manufacturer's name and post-office address, and the words "full cream," "three-fourths cream," "one-half cream," "one-fourth cream" and "skimmed cheese." All cheese branded "full cream" shall contain not less than thirty-two per centum of butter-fat, as may appear upon proper test. All cheese branded "three-fourths cream" shall contain not less than twenty-four per centum of butter-fat, as may appear upon proper test. All cheese branded "one-half cream" shall contain not less than sixteen per centum of butter-fat, as may appear upon proper test. All cheese branded "one-fourth cream" shall contain not less than eight per centum of butter-fat, as may appear upon proper test. All cheese containing less than eight per centum of butter-fat, as may appear upon proper test, shall be branded "skimmed cheese:" Provided, however, That all full cream cheese sold, shipped or consigned to dealers outside of the Commonwealth of Pennsylvania may be branded, or stenciled, or not, as required by this act, at the option of the manufacturer. (Section 2, as amended May 2, 1901.)

Section 3. Every person, firm or corporation who shall violate any of the provisions of this act, shall, for every such offense, forfeit and pay the sum, of not less than fifty dollars, nor more than one hundred dollars, together with all charges and expenses for inspection and analysis connected therewith, by any person suing therefor in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions arising under the provisions of this act, and all cheese not in accordance with this act shall be subject to forfeiture and spoilation: Provided, That the Department of Agriculture, through its officer, known as the Dairy and Food Commissioner, together with his deputies, agents and assistants, shall be charged with the enforcement of the provisions of this act, and shall have authority to enter any building or factory where the same is sold or manufactured or exposed for sale, and shall have the right to take samples sufficient for analysis, upon tendering the value thereof.

All fines and penalties, including also charges for inspection and analysis, shall be paid to the Dairy and Food Commissioner, his deputies, agents or assistants, and by him immediately covered into the State Treasury, and so much of said fund as may be necessary for the enforcement of this act shall be drawn out upon warrants signed by the Secretary of Agriculture and Auditor General: Provided, That the provisions of this act shall not be construed to apply to such cheese as

is known as "fancy" cheese and is under five pounds in weight, each; or to what is known as cottage cheese or pot cheese, and do not contain anything injurious to health.

Section 4. This act shall take effect sixty days after its approval by the Governor of the Commonwealth.

APPROVED—The 23rd day of June, A. D. 1897.

COFFEE AND CHICORY LAW

Act of May 5, 1915, No. 143, P. L. 247.

AN ACT

Regulating the sale of chicory mixed with coffee, and providing a penalty.

Section 1. Be it enacted, &c., That it is lawful to sell chicory mixed with coffee if it conforms to the following conditions:

1. The amount of chicory shall not exceed fifteen per centum of the mixture of coffee and chicory.
2. The package containing the mixture shall bear the words in letters of the same style and size, but not less than one-half ($\frac{1}{2}$) inch high, "coffee and chicory," and may contain also the name and address of the manufacturer and distributor, a non-descriptive brand-name, and a statement of the net weight of the package contents, but no other printed matter.
3. The mixture shall contain no cereal in any form.
4. If sold in the form of a beverage in hotels or restaurants, there shall be displayed in a prominent place, in characters easily legible to the patrons, a placard bearing the words, "the coffee sold here is mixed with chicory."

Section 2. Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred (\$100) dollars.

Section 3. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 4. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

APPROVED—The 5th day of May, A. D. 1915.

COLD STORAGE LAW

Act of June 26, 1919, No. 278, P. L. 670 as amended May 19, 1931, No. 96.

AN ACT

Defining cold storage, and regulating time of storage of certain articles of food, and providing penalties for the violation of the provisions of this act.

Section 1. Be it enacted, &c., That, for the purpose of this act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature of forty degrees Fahrenheit in a cold-storage warehouse.

"Cold-storage warehouse" shall mean any place artificially or mechanically cooled to or below a temperature of forty degrees Fahrenheit in which articles of food are placed and held for thirty days or more.

"Articles of food" shall mean fresh meat, and fresh meat products, and all fresh fish, game, poultry, eggs and butter.

Section 2. No person, firm, or corporation shall maintain or operate a cold storage warehouse without a license so to do issued by the Department of Agriculture. Any person, firm, or corporation, desiring such a license, shall make written application to the department for that purpose, stating the location of the warehouse.

The department thereupon shall cause an examination to be made of said warehouse, and, if it be found to be in a proper sanitary condition and otherwise properly equipped for its intended use, the department shall issue a license authorizing the applicant to operate the same as a cold storage warehouse during one year; the license shall be issued upon payment by the applicant of a license fee of fifty dollars (\$50) to the department and shall thereafter be paid by the department into the State Treasury through the Department of Revenue for the use of the Commonwealth. Provided: That no license fee shall be charged for the issuance of such license to any State-owned institution operating a cold storage warehouse. (Section 2, as amended May 19, 1931.)

Section 3. In case any cold storage warehouse, or any part thereof, shall at any time be deemed by the Director of the Bureau of Foods to be in an unsanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition, and, upon the failure of the licensee to put such cold-storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the Director of the Bureau of Foods, he shall revoke such license.

Section 4. Every such licensee shall keep accurate records of the articles of food received in, and of the articles of food withdrawn from, his cold-storage warehouse, and the Director of the Bureau of Foods shall have free access to such records at any time.

It shall be the duty of such person, firm, or corporation, licensed to operate a cold-storage warehouse, to file in the office of the Director of the Bureau of Foods on or before the sixth day of January, April, July, and October, of each year, a report setting forth in itemized

particulars the kinds and quantities of food products held in cold storage in such warehouse.

The report shall be made on printed forms prepared and supplied by the Director of the Bureau of Foods.

Section 5. The Director of the Bureau of Foods shall inspect and supervise all cold-storage warehouses, and make such inspection of articles of food therein, as he may deem necessary to secure the proper enforcement of this act, and he shall have access to all cold-storage warehouses at all reasonable times.

The Director of the Bureau of Foods may appoint such persons as he deems qualified to make such inspection under this act.

Section 6. It shall be unlawful for any person, firm, or corporation to place in any cold-storage warehouse, to keep therein, or to sell, offer, or expose for sale, any diseased, tainted, or otherwise unwholesome food.

Section 7. No person, firm, or corporation shall place, receive, or keep, in any cold-storage warehouse in this State, articles of food, unless the same shall be plainly marked, stamped, or tagged, either upon the container in which they are packed or upon the article of food itself, with the month and year when placed therein; or, in the case of articles of food being stored in bulk, the month and year of original storage shall be marked upon the doors or walls of the rooms in which the same are stored; and when such articles are removed, such month and year shall be marked upon the container in which the same shall be removed; and no person, firm, or corporation shall remove or allow to be removed such articles of food from any cold-storage warehouse unless the same shall be plainly marked, stamped, or tagged, on the container in which it is enclosed or upon the articles of food itself, with the month and year of such removal; and such marks, stamps, and tags shall be *prima facie* evidence of such receipt and removal of the dates thereof.

All articles of food in any cold-storage warehouse at the time this act goes into effect shall, before being removed therefrom, be plainly marked, stamped, or tagged with the month and year when this act goes into effect.

Section 8. No person, firm, or corporation shall sell, offer, or expose for sale, any of the herein named foods which shall have been held for a longer period of time than herein specified in a cold-storage warehouse or warehouses, to wit: Whole carcasses of beef or any parts thereof, twelve (12) months; whole carcasses of pork, or any parts thereof, twelve (12) months; whole carcasses of sheep, or any parts thereof, twelve (12) months; whole carcasses of lamb, or any parts thereof, twelve (12) months; whole carcasses of veal, or any parts thereof, twelve (12) months; poultry, twelve (12) months; game, twelve (12) months; eggs, twelve (12) months; butter, twelve (12) months; and fish, twelve (12) months.

Section 9. It shall be unlawful to sell, or to offer for sale, any article of food which has been held for a period of thirty days or over in cold storage, either within or without the State, without notifying persons purchasing or intending to purchase the same that it has

been so held, by the display of a plaerd plainly and conspicuously marked "Cold Storage Goods" on the bulk, mass, or artieles of food; and it shall be unlawful to represent or advertise as fresh any artiele of food which has been held in eold storage for a period of thirty days or over.

There shall also be displayed upon every open container containing such food, in a eonspicuous position, a placard with the words "Cold Storage Goods" printed thereon; and, when sueh food is sold from such container or otherwise at retail, before being delivered to the purchaser it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "Cold Storage Goods" printed or stamped thereon in letters one-fourth ($\frac{1}{4}$) inch square.

Section 10. It shall be unlawful to return to any cold-storage warehouse any article of food whieh has been once released from storage for the purpose of placing it on the market for sale, but nothing in this seetion shall be construed to prevent the transfer of goods from one cold-storage warehouse to another: Provided, That all prior markings, stampings, and taggings, upon such artieles shall remain thereon: And provided further, That such transfer is not made for the purpose of evading any provision of this act.

Section 11. The Director of the Bureau of Foods may make the necessary rules and regulations to earry this aet into effect.

Such rules and regulations shall be filed in the director's office, and shall not take effect until thirty days after such filing.

Seetion 12. Any person, firm, or eorporation violating any provision of this act, shall be guilty of a misdemeanor, and shall, upon conviction, be punished for the first offense by a fine not exeeding two hundred dollars (\$200); and for the second or any subsequent offense by a fine not exceeding three hundred dollars (\$300), or by an imprisonment of not more than one year, or by both such fine and imprisonment, in the discretion of the court.

Seetion 13. An act, approved the sixteenth day of May, one thousand nine hundred and thirteen (Pamphlet Laws, two hundred and sixteen), entitled "An act for the protection of the public health and the prevention of fraud and deception by regulating the storage and sale of cold storage foods; fixing penalties for the violation of the provisions thereof, and providing for the enforeement thereof," and the amendments thereto, and all other acts and parts of aets inconsitent with the provisions of this act, are hereby repealed.

APPROVED—The 26th day of June, A. D. 1919.

FRESH EGGS LAW

Act of July 10, 1919, No. 356, P. L. 900, as amended June 10, 1931, No. 155.

AN ACT

Relating to eggs, prohibiting the sale, offering for sale, exposing for sale, or having in possession with intent to sell, eggs, for and as fresh, that are not fresh eggs, or of branding or labeling or marking eggs as being fresh eggs that are not fresh eggs: prescribing certain duties of the Dairy and Food

Commissioner in reference thereto: and providing penalties for the violation thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, or themselves, or by his, her, or their agents or servants, to sell, expose for sale, advertise for sale, or have in his, her, or their possession with intent to sell, any eggs, as fresh eggs, strictly fresh eggs, hennery eggs, new laid eggs, or other words or descriptions of similar import, that are not fresh eggs.

No egg shall be deemed to be fresh which does not meet the standards of quality of fresh eggs as shall be established by the Department of Agriculture. (Section 1, as amended June 10, 1931.)

Section 2. Eggs shall be deemed to be misbranded under this act, if they are in any way branded, labeled, marked, stamped, as being fresh eggs or by a similar term when they are in fact not fresh eggs.

Section 3. Any person violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than ten (10) dollars nor more than fifty (\$50) dollars, or, upon default of payment of such fine, to be imprisoned in the county jail for not more than ten days.

Section 4. That the Department of Agriculture shall be charged with the enforcement of the provisions of this act.

Section 5. That all fines and penalties imposed and received for the violation of any of the provisions of this act shall be paid to the Department of Agriculture, and, when so collected and paid, shall thereafter be, by the Department, paid, through the Department of Revenue into the State Treasury for the use of the Commonwealth.

Section 6. This act shall in no way repeal or otherwise affect any existing laws.

APPROVED—The 10th day of July, A. D. 1919.

EGGS UNFIT FOR FOOD LAW WITH SUPPLEMENT

Act of March 11, 1909, No. 9, P. L. 13, as amended June 12, 1931, No. 163, with Supplement of April 11, 1913, No. 43, P. L. 58, as amended May 23, 1919, No. 143, P. L. 267.

AN ACT

For the protection of the public health, by prohibiting the sale, offering for sale, exposing for sale, or having in possession with intent to sell, of eggs unfit for food, as therein defined, and prohibiting the use of such eggs in the preparation of food products; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, copartnership, association, or corporation, to conduct, at any given place, any business of opening eggs and separating the egg content

from the shell and using or disposing of the content thereof for any purpose, unless he, she, it, or they have first applied for and secured a license so to do from the Dairy and Food Commissioner. The form of such license shall be prescribed by the Dairy and Food Commissioner. The application for a license, in addition to other matters which may be required to be stated thereon by said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed separation of eggs is intended to be carried on, and the name and style under which said business is proposed to be conducted. If the said application is satisfactory to the Dairy and Food Commissioner, and said name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, the Dairy and Food Commissioner shall issue to the applicant a license, authorizing him, her, it, or them to engage in the business of opening the eggs and separating the egg content from the shell; for which said license the applicant shall first pay the annual sum of fifty dollars. The said license fee, when received by the Dairy and Food Commissioner, shall be by him immediately covered into the State Treasury for the use of the Commonwealth. Such license shall not authorize the holder thereof to carry on the business of opening the eggs and separating the egg content from the shell at any place other than that designated in the application and license. All licenses shall be taken out for a full year.

The opening of eggs unfit for food purposes and their denaturing by kerosene shall not be permitted in any building or premises where the opening of eggs for food purposes is carried on, and such eggs as are found to be unfit for food purposes must be placed in containers, painted of a bright red color, and such red-colored containers must not be used for wholesome eggs, nor be found in establishments where food products are prepared; and violations of either of these provisions shall be a misdemeanor and subject to the same penalties as the act of which this is a supplement.

It shall be unlawful for any person, copartnership, association, or corporation, by himself, herself, itself, or themselves, or by his, her, its or their agents, servants, or employes, to sell, offer for sale, expose for sale, or have in possession, eggs that are unfit for food, within the meaning of an act, entitled "An act for the protection of the public health, by prohibiting the sale, offering for sale, exposing for sale or having in possession with intent to sell, of eggs unfit for food, as therein defined, and prohibiting the use of such eggs in the preparation of food products; providing penalties for the violation thereof, and providing for the enforcement thereof," approved the eleventh day of March, Anno Domini one thousand nine hundred and nine, for any purpose, use, cause, or reason whatsoever, unless the same shall have first been denatured with a sufficient quantity of kerosene to render all of the same unfit for use in the preparation of food and food products; and further providing, that the shells of all such eggs that may be unfit for food, as hereinbefore mentioned shall first be removed or broken, by smashing or otherwise, so as to permit a free impregnation of the whole of the egg substance by the denaturing fluid.

For the purpose of enforcing the provisions of this act, the Department of Agriculture, through its officers, the Dairy and Food Com-

missioner and his agents and assistants, shall have full access to all places of business, factories, mills, buildings, cars, vessels, barrels, tanks, containers, and packages of whatever kind, used in keeping, storing, shipping, and handling eggs, and shall have power to take sufficient quantity of eggs therefrom, upon or offering payment for the same, for the purpose of making an analysis thereof.

All persons, copartnerships, associations, or corporations, violating any of the provisions of this act, or interfering with or refusing to give access to the Dairy and Food Commissioner or any of his agents or assistants when securing quantities of eggs for the purpose of analysis, shall be guilty of a misdemeanor, and subject to the same penalties as provided in the act to which this is a supplement. (Section 1, supplement of April 11, 1913, as amended May 23, 1919.)

Section 2. This act shall apply to eggs that, either before or after removal from the shell are wholly or partly decayed or decomposed, and to eggs in the fluid state, any portion of which are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that are derived from eggs that are wholly or partly decayed or decomposed. This act shall also apply to frozen masses or broken eggs, if the mass contains eggs that are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that have been taken from eggs that were wholly or partly decayed or decomposed.

Section 3. It shall be unlawful to sell, offer for sale, have in possession with intent to sell, either in shell, in broken out frozen masses, or in any condition whatsoever, incubated or incubator reject eggs, or eggs which have been subjected to incubation, whether natural or artificial, for a period of eight days or over, unless each egg or container of such eggs not in shell shall be branded, marked, or stamped with the words "incubated egg" or "incubated eggs," and it shall be unlawful to use any such incubated eggs in the preparation of or as a part of a food or foods, unless such food or foods shall be branded, marked, or stamped with the words "incubated eggs used."

It shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employes, to use eggs that are either wholly or partly decayed or decomposed, in the preparation of food products: And provided further, That there shall be no delivery, sale, purchase or acceptance of wholly or partly decayed or decomposed eggs in or at any establishment where food products are prepared or manufactured. (Section 3, as amended June 12, 1931.)

Section 4. That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than two hundred (\$200) dollars, nor more than one thousand (\$1,000) dollars, or to undergo an imprisonment of not less than three (3) months, nor more than nine (9) months, or both or either, at the discretion of the court.

Section 5. That the Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 6. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the

Dairy and Food Commissioner, or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

APPROVED—The 11th day of March, A. D. 1909.

FRESH MEAT, POULTRY, GAME AND FISH LAW

Act of March 28, 1905, No. 46, P. L. 64.

AN ACT

To prohibit the selling, shipping, consigning offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish, or shell fish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor; and to prescribe penalties and punishment for violation, and the means and the methods of procedure for the enforcement thereof.

Section 1. Be it enacted, &c., That if any person, firm, or corporate body shall, by himself, herself or themselves, or by his, her, or their or its agents or servants, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, as fresh any meat, poultry, game, or shell fish which contains any substance, article or ingredient possessing a preservative character or action or which contains any coal-tar dye, or any other substance or ingredient possessing a coloring character or action, shall be deemed guilty of a misdemeanor; and, upon conviction thereof in the court of quarter sessions of the peace of the proper county, shall be sentenced to pay a fine of not less than one hundred dollars nor more than two hundred dollars, and all costs, or to undergo an imprisonment in the county jail of not less than sixty days nor more than ninety days, or both, at the discretion of the court; and, upon conviction of any subsequent offense, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than sixty days nor more than four months, or both or either, at the discretion of the court: Provided. That nothing in this section shall prohibit the use of ice as a preservative, or proper refrigeration.

Section 2. The Dairy and Food Commissioner shall be charged with the enforcement of all provisions of this act; and all penalties which may be recoverable, and all fines which may be paid, in any proceeding or proceedings to enforce the provisions of this act, shall be paid to the Dairy and Food Commissioner, or his agent, and by him paid into the State Treasury; and the money so paid shall constitute a special fund, for the use of the Dairy and Food Commissioner in enforcing this act, and may be drawn out upon warrants signed by the Dairy and Food Commissioner or Secretary of Agriculture, and approved by the Auditor General.

Section 3. All acts or parts of acts inconsistent with this act are hereby repealed; but the repeal of said acts shall in no way interfere with, or prevent the prosecution to final termination of, any action or

prosecution now pending, or which may be hereafter commenced for any violation of said acts, which has already been committed.

APPROVED—The 28th day of March A. D. 1905.

FRUIT SYRUP LAW

Act of March 3, 1925, No. 8, P. L. 10.

AN ACT

Relating to fruit syrups, and prohibiting the manufacture, sale, offering for sale, exposing for sale or having in possession with intent to sell, of any adulterated or misbranded fruit syrups; and providing penalties for the violation thereof; and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any fruit syrup which is adulterated or misbranded within the meaning of this act.

Section 2. A fruit syrup shall be deemed to be adulterated within the meaning of this act if it contains any added boric acid, or borates, salicylic acid, or salicylates, formaldehyde, sulphurous acid, or sulphites, hydrofluoric acid, or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, betanaphthol, hydronaphthol, abrastol, or compounds of copper, zinc, or other poisonous metals or other added substance deleterious to health.

Section 3. That for the purpose of this act a fruit syrup shall be deemed to be misbranded:

First. If it be an imitation of, or offered for sale under the name of another article.

Second. If it be labeled or branded or tagged so as to deceive or mislead the purchaser.

Third. If the bottle or receptacle containing it or its label shall bear any statement, design or device, regarding the ingredients or the substances contained therein, which statement, design, or device, shall be false or misleading in any particular.

Section 4. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty (\$50) dollars, nor more than one hundred (\$100) dollars, or, to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both, or either, at the discretion of the court.

Section 5. The Department of Agriculture shall be charged with the enforcement of the provisions of this act.

Section 6. All fines and penalties imposed and recovered for any violations of any of the provisions of this act, shall be paid to the De-

partment of Agriculture, or its agents, and when so collected and paid, shall thereafter be, by the Department of Agriculture, paid into the State Treasury for the use of the Commonwealth.

Section 7. The aet approved the twenty-sixth day of April, one thousand nine hundred and five (Pamphlet Laws, three hundred and eleven), entitled "An act regulating the manufacture or sale of fruit syrups, providing for the enforcement thereof, and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," is hereby repealed.

All other aets or parts of aets inconsistent with the provisions of this aet are hereby repealed.

APPROVED—The 3rd day of March, A. D. 1925.

ICE CREAM LAW

Act of March 20, 1923, No. 18, P. L. 25, as amended June 12, 1931, No. 164.

AN ACT

For the protection of the public health and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale, and having in possession with intent to sell, of adulterated or deleterious ice cream, including coated ice cream and the coating thereof; fixing a standard of butter-fat for ice cream; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it is unlawful for any person, assoeiation, partnership, or corporation, by himself, herself, itself, or themselves, or by his, her or their agents, servants, or employes, to sell, offer for sale, expose for sale, or have in possession with intent to sell, ice cream, including coated ice eream and the coating thereof, or sherbet or ice, which is adulterated within the meaning of this act.

For the purpose of this act the word "sherbet" is hereby defined to be the product made from milk or milk products and ineluding ice cream mix, approved sweetening material, and fruit flavoring material, with or without stabilizers, frozen to the eonsistency of ice eream.

For the purpose of this act the word "ice" is hercby defined to be a product made from water, approved sweetening material, and fruit flavoring material, with or without stabilizers, frozen to the consistency of ice cream (Seetion 1, as amended June 12, 1931.)

Seetion 2. Iee cream, including eoated iee cream and the coating thereof sherbet and ice, shall be deemed to be adulterated within the meaning of this aet:—

First. If it contains borie aeid, formaldehyde saccharin, or any other added substance or compound that is deleterious to health.

Seeond. If it contains salts of copper, iron oxide oehres, or any coloring substance deleterious to health: Provided, That this paragraph shall not be construed to prohibit the use of harmless coloring matter in iee cream, when not used for fraudulent purposes.

Third. If it contains any deleterious flavoring matter, or flavoring matter not true to name.

Fourth. If it contains any fats, oils, or paraffin, other than milk fats, added to, or blended, or compounded, with it: Provided, however, That chocolate ice cream and the coating of coated ice cream may contain cocoa butter.

Fifth. If a product is manufactured, which is an imitation of or substitute for ice cream, sherbet or ice and is offered for sale under any coined or trade name.

Sixth. If it is offered for sale from any container, compartment, or cabinet, which contains any article other than ice cream, coated ice cream, sherbet or ice.

Seventh. If it contains, in the case of ice cream, less than ten (10) per centum butter fat except when fruit or nuts are used for the purpose of flavoring, then it shall not contain less than eight (8) per centum butter-fat, if it contains, in the case of sherbet, more than five (5) per centum of milk solids, and if it contains, in the case of ice, any milk solids whatever. (Section 2, as amended June 12, 1931.)

Section 3. It is unlawful for any person, association, partnership, or corporation, to sell, offer for sale, expose for sale, or have in possession with intent to sell, any ice cream, including coated ice cream and the coating thereof, or sherbet or ices in any container which is falsely labeled or branded as to the name of the manufacturer thereof; or to misrepresent, in any way, the place of manufacture of ice cream including coated ice cream and the coating thereof, sherbets or ices, or the manufacture thereof.

It is unlawful for any person to use or cause or allow to be used, any equipment, cabinet, can, or other container belonging to one manufacturer for the purpose of preserving or holding any ice cream, coated ice cream, sherbet or ice, manufactured by another manufacturer, or for any person, manufacturer, or employe or agent of any manufacturer to knowingly supply or place or deposit ice cream, coated ice cream, sherbet or ice of one manufacturer in any equipment, cabinet, can or other container belonging to another manufacturer. It is unlawful for any person, other than the owner, to remove, erase, obliterate, cover, or conceal any manufacturer's or owner's name, insignia, device, or distinguishing mark, which may appear or be placed on any ice cream equipment, cabinet, can, or other container. (Section 3, as amended June 12, 1931.)

Section 4. Any person, association, partnership, or corporation, violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars; or in the case of an individual, or the officers and members of an association, partnership, or corporation to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both.

Section 5. The Director of the Bureau of Foods of the Department of Agriculture shall be charged with the enforcement of the provisions of this act.

Section 6. All fines and penalties, imposed and recovered for the violation of any of the provisions of this act, shall be paid to the Director of the Bureau of Foods, or his agent, and, when so collected and paid, shall thereafter be by the Director of the Bureau of Foods paid into the State Treasury for the use of the Commonwealth.

Section 7. The act, approved the twenty-fourth day of March, one thousand nine hundred and nine (Pamphlet Laws, sixty-three), entitled "An act for the protection of the public health; and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale, and having in possession with intent to sell, of adulterated or deleterious ice cream; fixing a standard of butter-fat for ice cream; providing penalties for the violation thereof, and providing for the enforcement thereof," is hereby repealed.

All other acts and parts of acts inconsistent herewith are hereby repealed.

APPROVED—The 20th day of March, A. D. 1923.

IMITATION DAIRY PRODUCTS IN CHARITABLE AND PENAL INSTITUTIONS LAW

Act of May 23, 1893, No. 65, P. L. 112.

AN ACT

To prohibit the use of any adulteration or imitation of dairy products in any charitable or penal institution, being supplementary to an act, entitled "An act for the protection of the public health and to prevent adulteration of dairy products and fraud in the sale thereof," approved May twenty-one, Anno Domini one thousand eight hundred and eighty-five.

Section 1. Be it enacted, &c., That it shall not be lawful for any charitable or penal institution in the State of Pennsylvania to use or furnish to its inmates any substance, the manufacture or sale of which is prohibited by section one of the act, entitled "An act for the protection of the public health and to prevent the adulteration of dairy products and fraud in the sale thereof," approved May twenty-first, Anno Domini one thousand eight hundred and eighty-five.*

* Section 1 of the act of May 21, 1885 (P. L. 22), referred to above, reads as follows:

"Section 1. Be it enacted, &c., That no person, firm or corporate body shall manufacture out of any oleaginous substance or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell, or offer for sale, or have in his, her or their possession with intent to sell the same as an article of food."

Section 2. That any officer, agent, steward or other official of any such charitable or penal institution, who shall knowingly buy any sub-

stance the manufacture and sale of which is prohibited by section one of the said act of May twenty-one, Anno Domini one thousand eight hundred and eighty-five, for use in such charitable or penal institutions, or who shall knowingly cause such substance to be used by the inmates of such charitable or penal institution, shall be deemed guilty of a misdemeanor, and, upon conviction shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years for each offense, or either or both at the discretion of the court.

Section 3. Every person who shall knowingly sell or offer for sale, to any officer, agent, steward or other official of any charitable or penal institution, any substance, the manufacture or sale of which is prohibited by section one of the said act of May twenty-first, Anno Domini one thousand eight hundred and eighty-five, for use in such charitable or penal institution, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding two years, or either or both at the discretion of the court.

APPROVED—The 23rd day of May, A. D. 1893.

LARD LAW

Act of March 11, 1909, No. 11, P. L. 17.

AN ACT

To protect the public health, and prevent fraud and deception in the manufacture or sale of lard, lard substitutes, imitation lard, and lard compounds; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That no person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants or employes, shall within the State, manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, lard which contains any ingredients other than the pure fat of swine, except as hereinafter provided.

Section 2. Imitation lard and lard substitutes, not containing any lard, may be made and sold, when offered for sale and sold under the distinctive trade-name thereof: Provided, however, That if said imitation lard or lard substitute is offered for sale or sold from a broken package, then the vessel, receptacle, or wrapper receiving the same, at the time of every sale, shall be plainly labeled or marked on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the words "Imitation Lard" or "Lard Substitute," or the distinctive trade-name of the said article or substance: And provided further, That the said imitation lard or lard substitute shall not be composed of, or contain any article, substance, or ingredients deleterious to health.

Compounds composed of not less than fifty (50) per centum of pure lard, and other substance or substances not deleterious to health, may

be made and sold, if the vessel, receptacle, or other wrapper receiving the same at the time of every sale thereof, is plainly marked or labeled on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the words "Compound Lard."

Section 3. Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty (\$50) dollars, nor more than one hundred (\$100) dollars.

Section 4. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 5. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Section 6. All acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

APPROVED—The 11th day of March, A. D. 1909.

MILK CONTAINER LAW

Act of March 26, 1925, No. 52, P. L. 83.

AN ACT

For the protection of public health by regulating the serving of milk for drinking purposes to patrons of hotels, restaurants, lunch-rooms, fountains, and dining-ear; and providing penalties.

Section 1. Be it enacted, &c., That it shall be unlawful for the owner or lessee of any hotel, restaurant, lunch-room, fountain or dining-car, or his, her or its agents, servants, or employes to sell or serve milk for drinking purposes to his, her or its patrons unless such milk is served and sold in the original bottle or similar original container in which milk is supplied to the said hotel, restaurant, lunch-room, fountain, or dining-ear.

It shall be unlawful hereafter to serve milk to the patrons of any hotel, restaurant, lunch-room, fountain, or dining-ear by the glass from bulk.

It shall be unlawful for the owner or lessee of any hotel, restaurant, lunch-room, fountain, or dining-car, or his, her, or its agents, servants, or employes to serve milk for drinking purposes to his, her, or its patrons unless said milk complies with the standards for milk fixed by the laws of the Commonwealth.

Section 2. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars nor more than fifty (\$50) dollars, or imprisonment for not less than

thirty (30) days nor more than ninety (90) days, or either or both, at the discretion of the court.

Section 3. Nothing contained in this act shall be construed to prevent or prohibit the owner or lessee of any hotel, restaurant, lunch-room, fountain, or dining-car, or other person from purchasing milk in bulk for uses other than for serving patrons with milk for drinking purposes, nor to prevent the sale and serving of cream, skimmed milk, or buttermilk from bulk if the same is pure and wholesome and is sold and served as cream, skimmed milk, or buttermilk, nor shall it prevent or prohibit the sale of mixed drinks at soda fountains.

Section 4. The Department of Agriculture shall be charged with the enforcement of this act.

Section 5. All fines imposed and recovered for violation of any of the provisions of this act shall be paid to the Department of Agriculture or its agent, and when so collected and paid shall thereafter be, by the Department of Agriculture, paid into the State Treasury for the use of the Commonwealth.

Section 6. All acts and parts of acts inconsistent with this act are repealed.

Section 7. This act shall take effect and be in force sixty days after the date of its approval.

APPROVED—The 26th day of March, A. D. 1925.

MILK AND CREAM LAW

Act of June 8, 1911, P. L. 712, as amended June 2, 1915, No. 337, P. L. 735.

AN ACT

Relating to milk; providing for the protection of the public health, and the prevention of fraud and deception, by regulating the sale of milk, skimmed milk and cream; providing penalties for the violation thereof; and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself, or themselves, or by his, her, its or their agents, servants or employes to sell, offer for sale, expose for sale, or have in possession with intent to sell, milk which contains any added water, or milk which has had the butter-fat or any portion thereof removed therefrom, or milk to which has been added any substance for the purpose of increasing its consistency or thickness, or milk which contains less than three and one-quarter (3 $\frac{1}{4}$) per centum of butter-fat and less than twelve (12) per centum of milk solids: Provided, however, That skimmed milk when clean and wholesome, may be sold, if sold as skimmed milk.

Section 2. That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employes, to sell, offer for sale, expose

for sale, or have in possession with intent to sell, cream which contains or is mixed with any added condensed or evaporated milk or cream, or cream to which has been added any substance for the purpose of increasing its consistency or thickness, or cream which contains less than eighteen (18) per centum of butter-fat: Provided, That cream, when it contains or is mixed with any added condensed or evaporated milk or cream, may be sold, if the vessel or container in which such cream is sold is plainly labeled, stating the fact that such cream contains or is mixed with added condensed or evaporated milk or cream, and the amount thereof.

Section 3. That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars, nor more than fifty (\$50) dollars or imprisonment for not less than thirty (30) days, nor more than ninety (90) days, or either or both, at the discretion of the court.

If a person accused of violating section one of this act shall furnish satisfactory affidavit that nothing has been added to or taken from the milk in question, which is otherwise pure and wholesome, and is not below three (3) per centum of butter-fat, the Dairy and Food Commissioner shall file said affidavit with the record; and no prosecution shall be instituted against said person. This provision shall not apply to, or in any way affect, samples of milk purchased or obtained prior to the approval of this act. (Section 3, as amended June 2, 1915.)

Section 4. That the Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 5. That all fines and penalties imposed and received for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Section 6. This act shall not apply to nor in any way affect the act, entitled "An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven, and the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,' approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven,"—which act shall remain in full force; but all other acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

APPROVED—The 8th day of June, A. D. 1911.

ADULTERATION OR COLORING OF MILK OR CREAM LAW

Act of June 10, 1897, No. 118, P. L. 142, as amended April 19, 1901, No. 59, P. L. 85.

AN ACT

To prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same.

Section 1. Be it enacted, &c., That if any person, firm, or corporate body, by himself, herself, or themselves, or by his, her or their agents or servants, shall offer for sale, expose for sale, sell, or have in possession with intent to sell, for human consumption, milk or cream to which has been added boracic acid salt, boracic acid, salicylic acid, salicylate of soda, formaline, formaldehyde, sodium flouride, sodium benzoate, or any other compound or substance for the purpose of preserving or coloring the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in the court of quarter sessions of the proper county, shall be sentenced to pay a fine of not less than fifty nor more than one hundred dollars, or to undergo an imprisonment not exceeding sixty days, or both, at the discretion of the court. (Section 1, as amended April 19, 1901.)

Section 2. The agent of the Department of Agriculture, known as the Dairy and Food Commissioner, shall be charged with the enforcement of all the provisions of this act, and shall have all the power to enforce this act that is given him to enforce the provisions of the act by which he received his appointment.

Section 3. All penalties and costs for the violation of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by him paid into the State Treasury, to be kept as a fund, separate and apart, for the use of the Department of Agriculture for the enforcement of this act, and to be drawn out upon the warrant signed by the Secretary of Agriculture and the Auditor General.

Section 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

APPROVED—The 10th day of June, A. D. 1897.

FILLED MILK LAW

Act of March 21, 1923, No. 20, P. L. 28, followed by supplement of June 29, 1923, No. 361, P. L. 929.

AN ACT

For the prevention of fraud and the protection of the public health; relating to milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, dried, powdered, or desiccated; prohibiting the introduction of foreign fats into them; regulating the sale of and defining condensed, concentrated and evaporated milk; stipulating penalties for the infraction thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That for the purpose of this act the definitions of condensed milk, evaporated milk, concentrated milk, is the product resulting from the evaporation of a considerable portion of the water from milk, or from milk, with adjustment, if necessary, of the ratio of fat to non-fat solids by the addition or by the abstraction of cream it contains, all tolerances being allowed for not less than seven and eight-tenths per cent of milk-fat, nor less than twenty-five and five-tenths per cent of total milk solids: Provided, however, That the sum of the percentages of milk-fat and total milk solids be not less than thirty-three and seven-tenths per cent.

Section 2. It shall be unlawful for any person, firm, or body corporate, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employes, to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any condensed, evaporated, or concentrated milk which shall not conform at least to the minimum standards set forth respectfully in section one hereof, and, when contained in hermetically sealed cans, does not bear stamped or labeled thereon the name and address of the manufacturers or distributors thereof.

Section 3. It shall be unlawful for any person, firm, or body corporate, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employes, to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to or with which has been added, blended, or compounded any fats or oils, other than milk-fats, either under the name of said products or articles or the derivatives thereof, or if labeled under any fictitious coined or trade names whatsoever: Provided, however, That nothing in this act shall be construed as prohibiting the use of chocolate as a flavor.

Section 4. Any violation of the provisions of this act is hereby declared to be a misdemeanor, and any person, whether individually or as a member of a partnership or as a responsible agent or officer of an incorporate body, who shall be convicted of such violation, either on his own behalf or in the interest of a corporate body, shall be sentenced to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or to pay a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars, or both.

Section 5. The Director of the Bureau of Foods shall be charged with the enforcement of the provisions of this act.

Section 6. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and, when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State Treasury for the use of the Commonwealth.

Section 7. Nothing in this act shall be construed to prohibit the shipment into this Commonwealth from a foreign state and the first sale thereof in this Commonwealth in the original package, intact and unbroken, of any of the products or articles the manufacture, sale, or

exchange of which, or possession of which with intent to sell or exchange, is prohibited hereby.

Section 8. Should any section or any part of a section or sections hereof become or be declared to be inoperative or void for any cause or reason whatsoever, the remainder of this section or of such sections shall be and remain in full force and effect.

Section 9. This act shall become effective ninety days after its passage.

Section 10. All acts or parts of acts inconsistent herewith are hereby repealed.

APPROVED—The 21st day of March, A. D. 1923.

FILLED MILK LAW SUPPLEMENT

Act of June 29, 1923, No. 361, P. L. 929.

A SUPPLEMENT

To an act, approved the twenty-first day of March, one thousand nine hundred twenty-three, entitled "An act for the prevention of fraud and the protection of the public health; relating to milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, dried, powdered, or desiccated; prohibiting the introduction of foreign fats into them; regulating the sale of and defining condensed, concentrated, and evaporated milk; stipulating penalties for the infraction thereof; and providing for the enforcement thereof"; defining condensed, concentrated, and evaporated, skimmed milk, and compounds thereof; regulating the manufacture, sale, and exchange thereof; and providing penalties.

Section 1. Be it enacted, &c., That for the purpose of this act, condensed, concentrated, and evaporated skimmed milk is defined as the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and shall contain, all tolerances allowed, at least twenty (20%) per centum of total milk solids, or, if sugar has been added, at least twenty-eight (28%) per centum of total milk solids, and shall include compounds of any kind containing skimmed milk.

Section 2. It is unlawful for any person, firm, or corporation to manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk, or any compound of any kind containing skimmed milk, whether with or without the addition of sugar, in hermetically sealed cans or receptacles, unless such can or receptacle shall contain at least five pounds net weight, and shall have plainly marked, printed, or indicated thereon the words, "Concentrated Skimmed Milk, Unsweetened," or "Concentrated Skimmed Milk, Sweetened," as the case may be, and immediately thereunder the words "Unfit for Infants," which required words shall be printed in dark block type at least one-half inch in height and one-half inch in width upon a light colored background, which required words shall be within a surrounding line at least one-

sixteenth inch in width, and no other matter whatsoever shall be printed or appear within such surrounding line, and where the size of the can or receptacle will permit, the foregoing words within the designated surrounding line are to be shown on the label twice on opposite sides at equidistant points. The name and address of the manufacturer or distributor thereof shall also appear, but not within the surrounding line.

It is unlawful for any person, firm, or corporation to manufacture, or sell or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk labeled under any fictitious or coined or trade name whatsoever.

It is unlawful for any person, firm, or corporation to manufacture, or sell or exchange, or have in possession with intent to sell or exchange, any condensed, concentrated, or evaporated skimmed milk, unless the same conforms in all respects with condensed, concentrated, or evaporated skimmed milk as hereinbefore defined.

Section 3. Any violation of the provisions of this act is hereby declared to be a misdemeanor, and any firm or corporation or person, whether individually or as a member of a firm, or a responsible agent or officer of a corporation, which or who shall be convicted of such violation, shall, for every such offense, be subject to the penalties provided for in the act to which this is a supplement.

APPROVED—The 29th day of June, A. D. 1923.

MILK TESTING LAW

Act of May 6, 1925, No. 290, P. L. 541, as amended April 7, 1927.

AN ACT

Providing for the protection of the public health and the prevention of fraud and deception by regulating the weighing, testing, buying, and selling of milk and cream; providing for the examination and appointment of certified testers and the issuing of licenses and making of tests; and providing penalties.

Section 1. Be it enacted, &c., That every creamery, shipping station, milk factory, cheese factory, ice-cream factory, or milk condensery, or person receiving, buying and paying for milk or cream regardless of the method of settlement shall be required to hold a permit for each and every place where milk or cream is received by weight or measure: Provided, however, That nothing in this act shall apply to individuals buying milk or cream for private use, or to producers buying milk in emergencies to make up their regular supply, or to hotels, restaurants, boarding-houses, railroad dining-cars, retail stores, or drug-stores. The permit shall be issued by the Secretary of Agriculture to such creamery, shipping station, milk factory, cheese factory, ice-cream factory, or milk condensery, or person upon the payment of a fee of five (\$5.00) dollars and after filing of such information as may be required by the Secretary of Agriculture. All moneys so collected shall be used to meet the expenses of the Department of Agriculture in the

enforcement of this act. The permit shall be valid for a term of one calendar year and may be revoked by the Secretary of Agriculture for any violation of the provisions of this act. This permit issued hereunder shall be posted in plain view in the station for which it is issued. (Section 1, as amended April 7, 1927.)

Section 2. It shall be unlawful for any person, association, copartnership, or corporation, their agents or servants engaged in the business of buying milk or cream on the basis of or in any manner with reference to the amount or percentage of butter-fat contained therein, to under-read, over-read or otherwise fraudulently manipulate the test commonly known as the "Babcock test" used for determining the percentage of such fat in said milk or cream, or to falsify the record thereof, or to make the "Babcock" reading except when the fat has a temperature of one hundred and thirty degrees to one hundred and forty-five degrees Fahrenheit, or to use for such test quantities other than seventeen and six-tenths (17.6) cubic centimeters in the case of milk and nine (9) grams or eighteen (18) grams in the case of cream. In all tests of cream the cream shall be weighed and not measured into the test bottle.

Section 3. No person, association, copartnership, or corporation purchasing milk or cream and paying for the same on the basis of the percentage of butter-fat contained therein shall, if the percentage of butter-fat is ascertained by the said "Babcock test," use any test glassware except standard Babcock test glassware which has been previously inspected and approved by the Bureau of Standards of the Department of Internal Affairs. If the proportion of butter-fat is determined by any method other than the "Babcock test" no utensil or instrument shall be used in such determination until the same has been inspected and approved by the Secretary of Agriculture or his agents.

Section 4. Every person, association, copartnership, corporation, or agent or servant thereof engaged in the business of receiving or buying milk or cream on the basis of or in any way with reference to the amount of butter-fat contained therein as determined by the "Babcock test" shall have the test or tests made only by a licensed tester who shall be responsible for the same. For the purpose of this act a licensed tester is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in milk and cream testing conducted by the Pennsylvania Department of Agriculture, shall have received a certificate of proficiency from the said department. Each applicant for such certificate shall pay a fee of three (\$3.00) dollars to the Secretary of Agriculture or his agents. The said department shall issue such certificate of proficiency in the name of the approved applicant and under serial number. The Secretary of Agriculture upon receipt of this certificate of proficiency, together with the payment of a fee of three (\$3.00) dollars, shall issue a license to said applicant good for one calendar year. This license shall be renewed annually without further examination at the discretion of the Secretary of Agriculture upon the payment of a fee of three (\$3.00) dollars. All moneys so collected shall be used to meet the expenses of the Department of Agriculture for the enforcement of this act. Each certified tester shall post his license in plain view in the testing room

in which he is employed. The Secretary of Agriculture shall revoke said license for failure to post it as above required or for any other just cause. (Section 4, as amended April 7, 1927.)

Section 5. Every person, association, copartnership, or corporation engaged in the business of buying milk or cream on the basis of or in any way with reference to the amount of butter-fat contained therein shall have the samples taken for testing purposes, either by a licensed tester or by a person licensed or certified to weigh and sample milk and cream. For the purpose of this act a person certified to weigh and sample milk or cream is any person who, having furnished satisfactory evidence of good character and having passed a satisfactory examination in weighing and sampling milk and cream conducted by the Department of Agriculture, shall have received a certificate of proficiency from said department. Each applicant for such certificate shall pay a fee of one dollar and fifty (\$1.50) cents to said department. The said department shall issue such certificate of proficiency in the name of the approved applicant and under serial number. The Secretary of Agriculture upon receipt of this certificate of proficiency, together with the payment of a fee of three (\$3.00) dollars, shall issue a license to said applicant good for one calendar year. This license shall be renewed annually without further examination at the discretion of the Secretary of Agriculture upon the payment of three (\$3.00) dollars. All moneys so collected shall be used to meet the expenses of the Department of Agriculture in the enforcement of this act. Each licensed weigher and sampler shall post his or her license in plain view in the plant in which he or she is employed. The Secretary of Agriculture may revoke said license for failure to post it as above mentioned or for any other just cause. (Section 5, as amended April 7, 1927.)

Section 6. Any person, association, copartnership, corporation, or agents or servants thereof engaged in the business of buying milk or cream on the basis of or in any way with reference to the amount or percentage of butter-fat contained therein as determined by the "Babcock test" shall make such test at least once every sixteen days. The milk or cream purchased from each person shall be represented by a composite sample taken from the entire delivery of each of the several lots of milk or cream bought from said person and shall cover a period of not more than sixteen days. The composite sample to which a suitable preservative has been added shall be made up of aliquot parts taken from each of the several lots of milk or cream bought from each person concerned, and composite samples of all persons concerned shall cover the same period of time. Each composite sample shall be held in an air-tight bottle—such bottle being plainly labeled showing the name or number of the person whose milk or cream the composite sample represents—and the rack or container where the samples are held shall be plainly labeled showing the date of the first and last day of the period covered by the said composite samples. The Secretary of Agriculture may require that the composite samples be tested on the premises where they are taken whenever in his judgment such action is for the public welfare. After such samples have been tested their residues shall be held intact and in condition suitable to test on the premises where they are tested for a further period of not less than ten days in order to make possible a check test. The Secretary of

Agriculture, or his agents, is hereby authorized to make such tests whenever in his judgment such tests are advisable for the public welfare. Every person, firm, or corporation affected by the provisions of this act shall within two days after the day on which the test herein provided for has been made, notify the seller of such milk or cream or his agent of the result of such test, stating the period of time during which said composite samples were taken. Notice under this section may be given by posting of the results of said tests continuously for ten days in a conspicuous place in receiving stations or in writing. Where a daily test is made on milk or cream and the average of these several tests used as a basis of settlement, there shall also be a composite sample taken covering a period of first and last half of month and shall be held intact on the premises for a period of not less than ten days, in order that the Secretary of Agriculture or his agents may make check tests whenever in his judgment such tests are advisable for the public welfare.

Section 7. No percentage of fat ascertained from a sample containing milk or cream that has been so treated as to cause it to test lower or higher than the test of the milk or cream from which it was taken shall be used as a basis of payment for milk or cream purchased or sold.

Section 8. No person, association, copartnership, or corporation purchasing or selling milk or cream or both by weight or measure, and no agent or servant of any such person, association, copartnership, or corporation shall fraudulently use as a basis of payment for such purchase any weight or measure other than the true weight or measure of the milk or cream purchased or sold.

Section 9. Every person, association, copartnership, corporation, or agent or servant purchasing or receiving milk or cream from the producer thereof for manufacturing purposes or for re-selling the same shall, at each time of payment to such producer for such milk or cream, or where the producer of such milk or cream is selling the same to such purchaser or receiver by or through cooperative association or other agency and the payment thereof is being made by such purchaser or receiver to such cooperative association or other agency shall, at the time such purchaser or receiver makes each payment to such cooperative association or other agency, give each such producer so delivering milk a statement showing the amount delivered daily during the time for which payment is made and the average per centum butter-fat test of same, provided payment is made on the basis of the butter-fat content—such statement to contain the name or number of the producer or seller of such milk or cream, the date of delivery thereof, and the amount so delivered; such statement to be given in the terms of the unit used as a basis for determining the value thereof: Provided, however, That such purchaser or receiver may in lieu of said monthly statement give daily to such producer or to his agent at the time of delivery of such milk or cream to such purchaser or receiver a written statement of the amount of milk or cream so received or purchased.

Section 10. The Secretary of Agriculture and his agents are hereby authorized to enter the premises and to examine the books, the records, and testing apparatus of any person, association, copartnership, or corporation, for the purpose of carrying out the provisions of this act.

Section 11. The Secretary of Agriculture or his agents shall be charged with the enforcement of the provisions of this act.

Section 12. For violation of any of the provisions of this act proceedings may be instituted against the owner or manager who is responsible for the business transacted, together with the certified tester or the person weighing and sampling either or all.

Section 13. Any person or persons violating any of the provisions of this act except section two shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than ten (\$10.00) dollars or more than fifty (\$50.00) dollars, or imprisonment in the county jail for not less than ten days or more than thirty days, or both, at the discretion of the court. Any person or persons found guilty of violation of section two of this act shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred (\$100.00) dollars or more than one thousand (\$1,000.00) dollars, or imprisonment in the county jail for not more than nine months.

Section 14. All fines and penalties imposed and received for the violation of any of the provisions of this act shall be paid to the Secretary of Agriculture or his agents and shall thereafter be paid into the State Treasury for the use of the Commonwealth.

Section 15. This act shall take effect ninety days after its approval.

Section 16. All acts and parts of acts inconsistent with this act are hereby repealed.

APPROVED—The 6th day of May, A. D. 1925.

NON-ALCOHOLIC DRINKS LAW

Act of March 11, 1909, No. 10, P. L. 15, as amended June 16, 1919, No. 242, P. L. 480, and May 25, 1921, No. 412, P. L. 1116.

AN ACT

Relating to non-alcoholic drinks; defining the same; and prohibiting the manufacture, sale, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded non-alcoholic drinks; and providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employees, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of non-alcoholic drink which is adulterated or misbranded, within the meaning of this act.

Section 2. That the term “non-alcoholic drink,” as used herein, shall include carbonated beverages of all flavors, sarsaparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other non-intoxicating drinks.

Section 3. A non-alcoholic drink shall be deemed to be adulterated, within the meaning of this act, if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, sulphurous acid or sulphites, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, betanaphthol, hydro-naphthol, abrastol, asaprol, oxides of nitrogen, nitrous acid or nitrates, compounds of copper, pyroligneous acid or other added substance deleterious to health.

Section 4. That for the purpose of this act, a non-alcoholic drink shall be deemed to be misbranded:

First. If it be an imitation of, or offered for sale under the distinctive name of, another article, or if it is colored or flavored in imitation of the genuine color or flavor of another substance..

Second. If it be labeled or capped or branded or tagged so as to deceive or mislead the purchaser.

Third. If the bottle or receptacle containing it, or its label or cap, shall bear any statement, design, or device, regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: Provided, That any non-alcoholic drink which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded under the following conditions:

A. In the case of mixtures or compounds which may be now, or from time to time hereafter, known as non-alcoholic beverages under their own distinctive names, and not an imitation of, or offered for sale under the name of, another article.

B. In the case of non-alcoholic beverages which are labeled, capped, branded, or tagged so as to plainly indicate that they are compounds, imitations, artificial, or blends, and the word "Compound," "Imitation," "Artificial," or "Blend," as the case may be, is plainly stated on the container in which it is offered for sale: Provided, That the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients not prohibited by this act and used for the purpose of coloring or flavoring only. (Section 4, as amended June 16, 1919.)

Section 5. (a) Any person who shall violate any of the provisions of the act to which this act is an amendment or any amendment of said act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars. Upon conviction for any subsequent violation of this act, such person shall be punished by a fine of not less than one hundred (\$100) dollars nor more than two hundred (\$200) dollars, and by imprisonment in the county jail of not less than ninety days nor more than six months.

(b) For the purpose of this act, any person against whom a charge is made under this act, who admits his guilt by the payment of a fine before the committing magistrate or in court without indictment, shall be deemed to have been convicted; and such conviction, and any other prior convictions in any court under an indictment, may be shown by testimony in the case or before court when sentence is to be imposed,

without a second or other subsequent conviction having been pleaded in the information or the indictment.

(c) The provisions of this act are severable, and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the other provisions of this act. (Section 5, as amended May 25, 1921.)

Section 6. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 7. All fines and penalties imposed and recovered for any violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Section 8. This act shall not apply to, nor in any way affect, the act, entitled "An act to prohibit the adulteration or coloring of milk or cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven; and the amendments thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,' approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;" nor the act, entitled "An act regulating the manufacture or sale of fruit syrups, providing for the enforcement thereof, and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for the violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," approved the twenty-sixth day of April, Anno Domini one thousand nine hundred and five—which act shall remain in full force.

APPROVED—The 11th day of March, A. D. 1909.

OLEOMARGARINE LAW

Act of May 29, 1901, No. 208, P. L. 327, as amended June 5, 1913, No. 273, P. L. 412, followed by supplement of May 10, 1921, No. 220, P. L. 467.

AN ACT

To prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining rooms, and boarding houses: for the manufacture or sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to pre-

scribe penalties and punishment for violation of this act, and the means and method of procedure for its enforcement, and regulate certain matters of evidence in such procedure.

Section 1. Be it enacted, &c., That no person, firm, or corporation shall, by himself, herself, or themselves, or by his, her, or their agent or servant, nor shall any officer, agent, servant, or employe of any person, firm, or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, article, product, or compound, made wholly or partly out of any fats, oils, or oleaginous substances, or compound thereof, not produced from pure, unadulterated milk, or cream from the same, without the admixture or addition of any fat foreign to the said milk or cream, and which shall be in imitation of yellow butter, produced from pure, unadulterated milk, or cream of the same, with or without coloring matter, unless such person, firm, or corporation shall have first obtained a license and paid a license fee as hereinafter provided; nor unless the said article, product, or compound, so manufactured, shipped, consigned, offered for sale, exposed for sale, or had in possession with intent to sell, shall be made and kept free from all coloration or ingredients causing it to look like butter of any shade of yellow, as hereinafter described; nor unless the same shall be kept and presented in a separate and distinct form, and in such manner as will advise the purchaser and consumer of its real character; nor unless such person, firm, or corporation shall, in all other respects, comply with and observe the provisions of this act. For the purpose of this act, oleomargarine, butterine, or similar substance, shall be deemed to look like, be in resemblance of, or in imitation of butter of a shade of yellow, when it has a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, as measured in the terms of the Lovibond tintometer scale, or its equivalent. (Section 1, as amended June 5, 1913.)

Section 2. Every person, firm, or corporation, and every agent of such person, firm, or corporation, desiring to manufacture, sell, or offer or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, not made or colored so as to look like yellow butter, shall make application for a license so to do, in such form as shall be prescribed by the Department of Agriculture, through its agent, the Dairy and Food Commissioner, which application, in addition to other matters which may be required to be stated therein by said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business. If the said application is satisfactory to the said Dairy and Food Commissioner, and said name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, he shall issue to the applicant or applicants a license, authorizing him, her, or them to engage in the manufacture or sale of oleomargarine, or butterine, or any similar substance, which shall not contain any coloration or ingredient that causes it to resemble yellow butter; for which said license the applicant or applicants shall

first pay: If a manufacturer, the annual sum of one thousand dollars; if a wholesaler, the annual sum of five hundred dollars, and if a retailer, the annual sum of one hundred dollars; if a proprietor of a hotel, restaurant, or dining room, the annual sum of fifty dollars; and if the proprietor of a boarding-house, the annual sum of ten dollars; and the said license fee when received by the Dairy and Food Commissioner, or his agent, shall be by him immediately covered into the State Treasury. Such licenses shall not authorize the manufacture or sale, exposing for sale, or having in possession with intent to sell, oleomargarine, butterine, or any similar substance, at any other place than that designated in the application and license; and the said license shall not authorize the manufacture, sale, exposing for sale, or having in possession with intent to sell, any oleomargarine, butterine, or any similar substance, made or colored so as to look like yellow butter, as herein provided.

All licenses under this act shall expire on the thirty-first day of December of each year; but licenses may be granted to commence on the first day of any month for the remainder of the year, upon the payment of a proportionate part of the annual license fee; such licenses may be transferred by the Dairy and Food Commissioner, upon the application in writing of the person, firm, or corporation to which the same has been granted: Provided, That transferee shall comply with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer, and shall thereafter comply with the provisions of this act.

Wholesale dealers, within the meaning of this act, shall be all persons, firms, and corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms, and corporations who make sales in quantities of ten pounds and over at any time; and retail dealers shall be all persons, firms, and corporations who shall sell in quantities less than ten pounds. (Section 2, as amended June 5, 1913.)

Section 3. After obtaining the license required by this act, the person, firm, or corporation obtaining the same shall, before beginning any business under the said license, hang up and display, in a conspicuous place, on the walls of the room or store in which the oleomargarine, butterine, or other similar substance is manufactured, sold or exposed for sale, the license so obtained as aforesaid; and shall also procure from the Department of Agriculture, through the Dairy and Food Commissioner, a sign or signs which in number, size and lettering shall be as the Dairy and Food Commissioner shall direct, and which shall be uniform throughout the Commonwealth, clearly setting forth that he, she or they are engaged in the manufacture or sale of oleomargarine; which said sign or signs, when procured, shall be hung up in a conspicuous place or places on the walls of every room or store in which the oleomargarine, butterine, or other similar substance is manufactured or sold. And in addition to such sign or signs, so hung up as aforesaid, every proprietor of a hotel, restaurant, dining-room or boarding-house, shall also have conspicuously placed, upon every counter or table at which food, meals or refreshments are served to customers, a placard plainly printed, in letters not less than one-half inch in length, stating that oleomargarine is used and served to customers.

Section 4. It shall be unlawful for any person, firm, or corporation, or any agent thereof, to sell, or offer or expose for sale, or have in possession with intent to sell, any oleomargarine, butterine, or similar substance, not in imitation of yellow butter, which is not marked and distinguished, on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the word "OLEOMARGARINE" printed thereon; such placard to be placed in a conspicuous position, in full view of the purchaser, and the said word "OLEOMARGARINE" on such placard shall be printed in plain, uncon-densed, Gothic letters, not less than one inch long, and such placard shall not contain any other words thereon. And there shall also be displayed upon every open tub, package or parcel containing such oleomargarine, butterine, or similar substance, not in imitation of yellow butter, in the same manner, in a conspicuous position, a placard with the word "OLEOMARGARINE" printed thereon, in the same form as above described in this section; and when oleomargarine, butterine, or other similar substance not in imitation of yellow butter, is sold from such tub or package, or otherwise, at retail, in print, roll or other form, before being delivered to the purchaser, it shall be wrapped in wrappers, plainly stamped on the outside thereof with the word "OLEOMARGARINE," printed or stamped thereon in letters one-fourth inch square; and said wrapper shall also contain the name and address of the seller and the quantity sold, and no other words thereon, and the said word "OLEOMARGARINE," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase.

Section 5. Every licensed manufacturer of oleomargarine, butterine, or other similar product, not in imitation of yellow butter, and every licensed wholesale dealer therein, shall keep a book in which shall be entered accurately every sale and shipment of oleomargarine, butterine, or other similar substance, not in imitation of yellow butter; giving the date of sale and shipment, the quantity, the person to whom sold and shipped, the place to which shipped, and the name of the transportation line by which shipped; which book shall always be open to the examination of the Dairy and Food Commissioner, his agents, attorneys, and representatives. Every licensed retail dealer in oleomargarine, butterine, or similar substance, not in imitation of yellow butter, shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, his agents, attorneys, and representatives, in which shall be entered the date of the receipt of all purchases of oleomargarine, butterine, or any similar substance, made by such retail dealer; stating thercin where, when and from whom purchased, and the quantity; and the said books, so to be kept by manufacturers, wholesale and retail dealers, shall be in such form as the Dairy and Food Commissioner shall direct.

Section 6. Every person, firm, or corporation, and every officer, agent, servant and employe of such person, firm, or corporation, who shall manufacture, sell or offer, or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, in violation of any of the provisions of this act; or who shall sell oleomargarine, butterine, or any similar substance, as or for butter; or shall fail to keep a book, in accordance with the last preceding sec-

tion; or who shall, in any other respect violate any of the provisions of this act, shall for every offense forfeit and pay the sum of one hundred dollars, which shall be recoverable, with the costs, including the expense of analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions for recovery of said penalties, with the right to either party to appeal to the court of common pleas, as provided in existing laws in suits for penalties. And all penalties and costs imposed and recovered under the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agents, and by him immediately covered into the State Treasury, to be paid out and used as hereinafter provided.

Section 7. In addition to the above penalty, every person, firm, or corporation, and every officer, agent, servant or employe of such person, firm, or corporation, who violates any of the provisions of this act shall also be guilty of a misdemeanor; and upon conviction thereof, shall be punished for the first offense by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court; and upon conviction of any subsequent offense, shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, and by imprisonment in the county jail for not less than six months nor more than twelve months.

Section 8. In any proceeding under this act, either for the collection of a penalty or a prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by justices of the peace, aldermen, and courts of record, as evidence of the granting of licenses to manufacture or sell oleomargarine or butterine, or of the fact that no such license has been granted to any particular person, firm, or corporation.

Section 9. Whenever a suit for the collection of a penalty, under the provisions of this act, shall be appealed to any court of record, or whenever any prosecution for a misdemeanor on account of any violation of the provisions of this act has been returned to any court of quarter sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys in case the person or persons who have been sued for such penalty, or prosecuted for such misdemeanor, have since the commencement of such suit or prosecution again violated any of the provisions of this act, to apply to the court, having jurisdiction of such appeal or of such prosecution, or to any law judge thereof, by petition, setting forth the facts, and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecution shall have been finally decided and determined; and thereupon the said court, or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper, and after inquiry into the facts alleged in said petition, shall, if satisfied that any violation of the provisions of

this act has been committed by such person or persons since the commencement of said suit or prosecution, make an order commanding and restraining the said person or persons from any further violation of the provisions of this act until such time as the said suit or prosecution shall have been finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which suit had been so brought, or has been duly convicted of a misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons from the further violation of the provisions of this act continuing and permanent; and any violation by any person or persons of any such restraining order of such court or judge, whether the said restraining order shall be made during the pendency of a suit for penalty or of a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order; and the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the courts of common pleas of this Commonwealth, sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order and the costs of the application and subsequent proceedings thereon shall be in the discretion of the court.

Section 10. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent, or attorney, or by any citizen of this Commonwealth, to make report to the court of quarter sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm, or corporation known by him to have violated any of the provisions of this act, or alleged by the person so giving notice as aforesaid to said constable to have violated any of the provisions of this act, and of the names of all witnesses furnished to said constable, whose testimony it is alleged will sustain or prove the fact of such violation; and it shall be the duty of the judge of the said courts to make inquiry of all constables, at the time of the making of their quarterly returns to the court of quarter sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whether such quarterly reports shall contain the name of any person alleged to have violated the provisions of this act, together with the names of witnesses to prove such violations, as also the name of the person giving notice to the constable as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send the witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring in the person so charged to answer the matters alleged in such prosecution, and thereupon proceed to trial as speedily as pos-

sible, according to the course of practice in the said court of quarter sessions.

Section 11. The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor, in accordance with the provisions of this act, and may prosecute to final judgment any such suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution, immediately upon the commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced; and shall, in like manner, report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceedings and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs as fixed by law, in said proceeding.

Section 12. The money paid into the Treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law; and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General, subject however, to the payment to any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State Treasury.

Section 13. The Dairy and Food Commissioner, his assistants agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all places of business, factories, farms, buildings, carriages, ears, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof, and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, oleomargarine, butterine, or other similar substances or any adulteration or imitation of butter, which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act, or of any act which may be hereafter enacted in relation to butter or the adulteration or imitation thereof; and they shall also have power to take from such package, can or vessel samples for analysis, upon paying or tendering the value of such samples.

Section 14. The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and

distributed; which semi-annual bulletin shall contain the name and address of every person, firm, or corporation to whom a license has been issued for the manufacture or sale of oleomargarine, butterine, or other similar substance; and, also, a tabulated statement of all the actions, civil or criminal, which have been brought for the violation of this act, giving the name and address of the defendant, and the disposition of every such case.

Section 15. All acts or parts of acts inconsistent with this act are hereby repealed; but the repeal of said acts shall not in any way interfere with, or prevent the prosecution to final termination of, any actions, civil or criminal, now pending or which may hereafter be commenced, for any violation of said acts which has already been committed.

APPROVED—The 29th day of May, A. D. 1901.

OLEOMARGARINE LAW SUPPLEMENT

Act of May 10, 1921, No. 220, P. L. 467.

A SUPPLEMENT

To an act, approved the twenty-ninth day of May, one thousand nine hundred and one (Pamphlet Laws, three hundred twenty-seven), entitled "An act to prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining-rooms, and boarding-houses; for the manufacture or sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure," by regulating advertisements and designations relating to oleomargarine or butterine; prohibiting the use of certain words in or in connection with such advertisements; and providing penalties.

Section 1. Be it enacted, &c., That it shall be unlawful for a person, copartnership, association, or corporation, or for any agent, servant, or employe of such person, or for any member, agent, servant, or employe of any such copartnership or association, or for any officer, director, agent, servant, or employe of any such corporation, to advertise, for any purpose whatsoever, in any newspaper, periodical, or magazine, or upon any handbill, or sign, or upon any billboard or by signs or otherwise in or upon or in connection with any premises, or to advertise or designate upon any package, carton, tub or other container, any substance, article, product, or compound, made wholly or partly out of any fats, oils, or oleaginous substances, or compound thereof, designated under the laws of the Commonwealth as oleomargarine or butterine, unless such advertisement or designation shall distinctly and clearly set forth the character of such substance, article, products, or compound by the use of the word oleomargarine or the

word butterine; and it shall be unlawful to use, in any such advertisement or designation on or in connection therewith, the word "butter" or any word such as "Holstein," "Jersey," or "Guernsey," or any other word which is commonly used as designating a known breed of cows.

Section 2. Every person copartnership, association, or corporation, and every officer, member, agent, and employe of such person, copartnership, association, or corporation, violating any of the provisions of this act, shall, for every such offense, be subject to the penalties provided for in the act to which this is a supplement.

APPROVED—The 10th day of May, A. D. 1921.

OYSTER LAW

Act of March 17, 1925, No. 20, P. L. 34.

AN ACT

Regulating the sale of oysters at retail.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, copartnership, association, or corporation, or his, her, or its servants, agents, or employes, to sell oysters at retail, in any manner whatsoever, except by numerical count: Provided, however, That this act shall not apply to oysters sold at retail when in unopened, sealed, original containers in which they are shipped in interstate commerce.

Section 2. Any person, copartnership, association, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars, or, in case of individuals, to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both.

Section 3. The Department of Agriculture shall be charged with the enforcement of this act.

Section 4. All fines imposed and recovered for the violation of any of the provisions of this act shall be paid to the Department of Agriculture or its agents, and when so collected and paid shall thereafter be, by the Department of Agriculture, paid into the State Treasury for the use of the Commonwealth.

Section 5. All acts and parts of acts inconsistent with this act are hereby repealed.

Section 6. This act shall take effect and be in force sixty days after the date of its approval.

APPROVED—The 17th day of March, A. D. 1925.

SANITARY BOTTLING LAW

Act of May 10, 1921, No. 221, P. L. 468.

AN ACT

For the protection of the public health by providing clean, sanitary establishments for bottling non-alcoholic drinks, including clean, sanitary ingredients, bottles, receptacles, and utensils; and providing penalties for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person to manufacture non-alcoholic drinks in an unclean, unsanitary establishment or under unclean, unsanitary conditions, or to use unsanitary ingredients, bottles, receptacles, or utensils.

Section 2. That every bottling establishment bottling non-alcoholic drinks, subject to the provisions of this act, shall be maintained and operated with strict regard for the purity and wholesomeness of the non-alcoholic drinks therein produced or distributed and necessary in the public interest and consistent with the character of the establishment bottling non-alcoholic drinks, pursuant to the following general requirements, namely:

(a) The entire establishment bottling non-alcoholic drinks, and its immediate appertaining premises, including the fixtures and furnishings, the machinery, apparatus, implements, utensils, and receptacles, used in the production, keeping, storing, handling, or distributing of the non-alcoholic drinks, or of the materials used in the non-alcoholic drinks, shall be maintained and operated in a clean, sanitary manner.

(b) The non-alcoholic drinks and the materials used in non-alcoholic drinks shall be clean, wholesome, and protected from any foreign and injurious contamination which may render said non-alcoholic drinks unfit for human consumption.

(c) The clothing, habits, and conduct of the employes shall be conducive to and promote cleanliness and sanitation.

(d) There shall be proper, suitable, and adequate toilets and lavatories, constructed, maintained, and operated in a clean and sanitary manner.

Section 3. That the Director of the Bureau of Foods shall be charged with the duty of enforcing the provisions of this act.

Section 4. That the Director of the Bureau of Foods, through his duly authorized officers, inspectors, agents, or other assistants, shall be permitted, at all reasonable times, to inspect any establishment, or part thereof, subject to the provisions of this act, together with its operation. Any person refusing or interfering with such inspection shall, upon conviction, be punished as provided in section eight.

Section 5. That if, as a result of an inspection provided for, it shall appear that any establishment is being maintained or operated in violation of any of the provisions of this act, the Director of the Bureau of Foods shall cause written notice thereof to be served upon the person violating said provisions, together with an order commanding an abatement of such violation and a compliance with this act within a

reasonable period of time stated in the order. If the instructions set out in the notice are not complied with within the time therein stated, then the Director of the Bureau of Foods shall at once cause proceedings to be instituted.

Section 6. That the Director of the Bureau of Foods shall make uniform and necessary rules and regulations for carrying out the provisions of this act.

Section 7. That the term "non-alcoholic drinks," as used in this act, shall include all non-alcoholic drinks, whether simple, mixed, or compound, and all substances and ingredients used in the preparation thereof. The term "establishment," as used herein, shall include all buildings, rooms, basements, cellars, lofts, or other premises or parts thereof, used, occupied, or maintained for the purpose of manufacturing, preparing, bottling, keeping, storing, handling, or distributing, in any manner, bottled non-alcoholic drinks for sale. The term "person," as used herein, shall include a partnership, association, company, or corporation, as well as a natural person.

Section 8. That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars nor more than one hundred (\$100) dollars, or to undergo an imprisonment of not less than thirty (30) days nor more than sixty (60) days, or both or either, at the discretion of the court.

Section 9. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Director of the Bureau of Foods or his agent, and when so collected and paid, shall thereafter be, by the Director of the Bureau of Foods, paid into the State Treasury for the use of the Commonwealth.

Section 10. This law shall take effect ninety (90) days after its passage.

APPROVED—The 10th day of May, A. D. 1921.

SAUSAGE LAW

Act of April 6, 1911, P. L. 51, as amended July 10, 1919, No. 355, P. L. 899.

AN ACT

Providing for the protection of the public health and the prevention of fraud and deception, by prohibiting the sale, the offering for sale or exposing for sale, or the having in possession with intent to sell, of adulterated or deleterious sausage; defining sausage; and prescribing the penalty for the violation thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person or persons, by himself, herself, or themselves, or by his, her or their agents, servants or employes, to sell, offer for sale, expose for sale, or have in possession with intent to sell, sausage that is adulterated within the meaning of this act.

Section 2. Defining Sausage. That for the purpose of the act, sausage or sausage-meat shall be held to be comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spieces, and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It shall contain no larger amount of water than the meats from which it is prepared contain when in their fresh condition.

Section 3. That for the purpose of this act, sausage shall be deemed to be adulterated:

First: If it contains added water or ice in excess of the quantity required to bring the amount up to that which the meats from which it is prepared contain immediately after slaughter, excepting such water and ice as may be added for the purpose of facilitating grinding, chopping, and mixing, and which shall in no case exceed five per centum.

Second. If it contains any cereal or vegetable flour.

Third. If it contains any coal-tar dye, boric acid, or borates, sulphites, sulphur dioxide, sulphurous acid, or any other substances injurious or deleterious to health.

Fourth. If it contains any diseased, contaminated, filthy, or decomposed substance; or is manufactured, in whole or in part, from a diseased, contaminated, filthy, or decomposed substance, or a substance produced, stored, transported, or kept, in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any product of a diseased animal or the product of any animal which has died otherwise than by slaughter. (Section 3, as amended July 10, 1919.)

Section 4. That any persons who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred (\$100) dollars, nor more than two hundred (\$200) dollars, or to undergo an imprisonment of not less than thirty (30) days, nor more than sixty (60) days, or both or either, at the discretion of the court.

Section 5. That the Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 6. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and when so collected and paid shall thereafter be by the Dairy and Food Commissioner paid into the State Treasury, for the use of the Commonwealth.

APPROVED—The 6th day of April, A. D. 1911.

VINEGAR LAW

Act of June 18, 1897, No. 140, P. L. 168, as amended May 21, 1901, No. 183, P. L. 275, and July 11, 1917, No. 300, P. L. 795.

AN ACT

Providing for the regulation of the manufacture and sale of distilled and fermented vinegars, prescribing their standard, to prevent the adulteration

of the same, providing for the enforcement thereof, and punishment for the violation of the same.

Section 1. Be it enacted, &c., That from and after the passage of this act no person, firm, or corporate body shall manufacture for sale, offer for sale or expose for sale, sell or deliver, or have in his, her or their possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold or exposed for sale as apple or cider vinegar which is not the legitimate product of pure apple juice, or vinegar not made exclusively of said apple cider, or vinegar in which foreign substances, drugs or acids shall have been introduced, as may appear upon proper tests; no vinegar shall be branded fruit vinegar unless the same be made wholly from grapes, apples or other fruits: Provided, That apple or cider vinegar may be sold which has been reduced to a strength of not less than four per centum, by weight, of acetic acid by the addition of pure water, if the cask, barrel, keg, or package containing such vinegar shall be plainly and distinctly marked or branded to conform to the actual contents thereof. (Section 1, as amended May 21, 1901 and July 11, 1917.)

Section 2. All vinegar made by fermentation and oxidation without the intervention of distillation, shall be branded "fermented vinegar," with the name of the fruit or substance from which the same is made, and all vinegar made wholly or in part from distilled liquor shall be branded as "distilled vinegar," and all such distilled vinegar shall be free from coloring matter, added before, during or after distillation, and from color other than that imparted to it by the process of distillation, and shall contain not less than four per centum, by weight, of absolute acetic acid. And all vinegar shall be made wholly from the fruit or grain from which it is represented to be made, and shall contain no foreign substance: Provided, That this shall not be construed to prohibit the use of such an amount of spices as are necessary for flavoring, provided such spices do not color the vinegar. (Section 2, as amended May 21, 1901.)

Section 3. No person, firm, or corporate body shall manufacture for sale, offer for sale, or have in his, her or their possession with intent to sell or expose for sale any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. And all packages containing vinegar shall be plainly and distinctly marked on each head of the cask, barrel or keg containing such vinegar, or if sold in other packages, each package shall be plainly and distinctly marked with the name and residence of the manufacturer, together with the brand required in section two thereof.

Section 4. Every person, firm, or corporate body who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay not less than fifty dollars nor more than one hundred dollars, which shall be recoverable, with costs, including expense of inspection and analysis, by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable: Provided, That the Department of Agriculture, through its officer known as the Dairy and Food Commissioner, together with the deputies, agents and assistants, shall be charged with the enforcement of this act, and shall have full

access to all places of business, factories, mills, buildings, carriages, cars, vessels, barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any vinegar, or of any adulteration or imitation thereof, or any package in which vinegar is mixed with articles of food. They shall also have power and authority to open any package, barrel or vessel containing any vinegar, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, and they shall also have full power and authority to take the samples therefrom for analysis upon tendering the value of said samples. And all charges, accounts and expenses of the Department for the enforcement of this act, through the said Commissioner and his deputies, agents, assistants, chemists, and counsel employed by him in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said Department are paid. And all penalties and costs for the violation of the provisions of this act shall be paid to the said Dairy and Food Commissioner, or his agents, and by him immediately covered into the State Treasury, to be kept as a fund for the use of the Department, and to be drawn out upon the warrant signed by the Secretary of Agriculture and the Auditor General.

Section 5. Every person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten or more than thirty days, or both fine and imprisonment for the first offense, and a fine of one hundred dollars and imprisonment for thirty days for every subsequent offense: Provided, That all fines and costs, including the expense of inspection and analysis imposed under this action, shall be covered into the State Treasury as provided by section four of this act, and all vinegar sold or offered for sale in violation of the provisions of this act shall be subjected to forfeiture and spoilation.

Section 6. Magistrates and justices of the peace throughout this Commonwealth shall have jurisdiction to hear and determine actions arising for violations of the provisions of this act, and to hold for court, or impose the penalties provided therein, subject to appeal as the law shall direct.

Section 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

APPROVED—The 18th day of June, A. D. 1897.

DIGEST OF DECISIONS RELATIVE TO FOOD LAWS

Constitutionality of Food Legislation

The general purposes of food legislation are usually two-fold:

1. To protect the public health.
2. To prevent fraud and deception.

Legislation designed for the purposes stated, or either of them, is a valid exercise of the police power of the State and as such is constitutional.

Powell vs. Commonwealth, 114 Pa. 265, affirmed by the United States Supreme Court in Powell vs. Pennsylvania, 127 U. S. 678, is the leading case in Pennsylvania upon the question of what is a valid exercise of the police power. In this case the Supreme Court says:

“Speaking of the prohibitory liquor law of Massachusetts passed in 1869, the Supreme Court of the United States says: ‘If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the state. * * * * * Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens and to the preservation of good order and the public morals. The legislature cannot, by any contrast, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maximum, *salus populi suprema lex*, and they are to be attained and provided for by such appropriate measures as the legislative discretion may devise. That discretion can no more be bargained away than the power itself;’ Beer Co vs. Massachusetts, 97 U. S. 25.”

“The test of the reasonableness of a police regulation prohibiting the making and vending of a particular article of food is not alone whether it is in part unwholesome and injurious. A prohibition may stand as a reasonable police regulation for the benefit of the public, if we believe that the only way to prevent the public being defrauded into purchasing the counterfeit article for the genuine is by such a prohibition. The fact that scientific experts may pronounce a manufactured product intended for human food to be wholesome and not injurious, and that in a pure state it may thus be good for food does not render it incompetent for the legislature to prohibit the manufacture and sale of the article, if in the judgment of the legislature, and not of the courts, it be necessary for the protection of the lives, health and property of the citizens and to the preservation of good order and the public morals.”

“In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete authority as it rests in and may be exercised by the sovereign power of any state, subject only to such restrictions as they have seen fit to impose and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specially defined legislative powers, but is entrusted with the general authority to make laws at discretion.”

For the general principles as to legislative power possessed by the General Assembly of the State, see authorities cited and discussion by Mitchell, J., in

Commonwealth vs. Moir 199 Pa. (1901), and opinion of Rice, P. J., adopted by the Supreme Court in Com. vs. Herve, 229 Pa. 132.

STATE HAS THE CONSTITUTIONAL POWER TO ESTABLISH FOOD STANDARDS AND DEFINE FOOD TERMS.

People vs. Clippery, 4 N. E. Rep. 170 reversing S. C. reported in 37 Hunter (N. Y.) 319.

People vs. Eddy, 59 Hunter (N. Y.) 615.

People vs. Hodient, 68 Hunter (N. Y.) 23.

Com. vs. Luscomb, 130 Mass. 42.

Com. vs. Evans, 132 Mass. 11.

People vs. Schaeffer, 68 Hunter (N. Y.) 341.

Com. vs. Bowen, 140 Mass. 483.

Com. vs. Tobias, 141 Mass. 129.

Com. vs. Wetherbee, 153 Mass. 159.

Com. vs. Pflaum, 50 Penna. Superior Ct. 55, affirmed in 236 Pa. 294.

A very good discussion of this question is to be found in

State vs. Campbell, 64 N. H. 402.

S. C. 13 Atl. 585; 10 Am. St. Rep. 419.

State vs. Newton, 45 N. J. L. 469.

See also:

State vs. Groves, 15 R. I. 208; 2 Atl. 384.

and the English cases,

Crofts vs. Taylor, 19 Q. B. D. 524.

Gage vs. Elsey, 10 Q. B. D. 518.

COURTS OF EQUITY.

A Court of Equity will not restrain a criminal prosecution, threatened or actually begun, for the purpose of enforcing obedience to a statute. Pa. Cold Storage et al., vs. N. B. Critchfield, Secretary of Agriculture and James Foust, Dairy and Food Commissioner, 19 Dauphin Co. 344.

A Court of Equity is not required to give an opinion upon the constitutionality of a statute in advance of any violation of its provisions. Pa. Cold Storage Co. et al., N. B. Critchfield et al., 19 Dauphin Co. 344.

CONSTITUTIONALITY OF THE SEVERAL FOOD LAWS.

1. Oleomargarine:

Act of May 21, 1885, P. L. 22, is constitutional.

Powell vs. Com., 114 Pa. 265.

Powell vs. Pennsylvania, 127 U. S. 678.

Walker vs. Com., 11 Atl. 623.

Com. vs. Paul 148 Pa. 559.

Com. vs. Shirley, 152 Pa. 170.

This Act was, however, declared unconstitutional by the United States Supreme Court in so far as it affects sale of oleomargarine imported into the State from another state or a foreign country and sold within the State in the original package.

Shollenberger vs. Pennsylvania, 171 U. S. 1.

See also:

Collins vs. New Hampshire, 171 U. S. 30.

The decision in Shollenberger vs. Pennsylvania, however, does not overrule nor in any way invalidate the decision in Powell vs. Pennsylvania.

See:

Com. vs. Mellet, 27 Pa. Super. Ct. 41.

Where two pounds were taken from a package containing ten pounds that was shipped into the State, it was a breaking of the original package and thereby the contents of it became part of the common mass of property within the State. Com. vs. Paul, 148 Pa. 559.

Act of May 23, 1893, P. L. 112, relating to use of oleomargarine in charitable institutions is constitutional.

Com. vs. Webster, 13 Dist. Rep. 199.

Oleomargarine in charitable institutions,
13 Dist. Rep. 78.

Act of May 5, 1899, P. L. 241, is constitutional.

Com. vs. Van Dyke, 13 Pa. Super. Ct. 484.

Com. vs. McCann, 198 Pa. 509.

Com. vs. Difenbacher, 14 Pa. Super. Ct. 264.

Act of May 29, 1901, P. L. 327, is constitutional.

Com. vs. McDermott (No. 1), 37 Pa. Super. Ct. 1.

Com. vs. Caulfield, 211 Pa. 644.

Plumley vs. Mass., 155 U. S. 462.

Com. vs. Mellet, 27 Pa. Super. Ct. 41.

Com. vs. Caulfield, 211 Pa. 644, affirming 27 Pa. Super. Ct. 279.

Com. vs. Andrews, 211 Pa. 110 (as to Section 9).

Com. vs. McDermott (No. 2), 224 Pa. 362, affirming 37 Pa. Super. Ct. 19.

As to constitutionality of injunction clauses of this Act, see

Com. vs. Andrews, 211 Pa. 644.

Com. vs. Henderson, 31 Pa. Super. Ct. 383.

2. Renovated Butter:

Act of July 10, 1901, P. L. 643, is constitutional.

Com. vs. Seiler, 20 Pa. Super. Ct. 260.

3. Eggs unfit for food:

Act of March 11, 1909, P. L. 13, is constitutional.

Com. vs. Ellis (No. 1), 46 Pa. Super. Ct. 72.

4. Ice-cream Act:

Act of March 24, 1909, P. L. 63, is constitutional and is not repealed by Act of May 13, 1909, P. L. 520.

Com. vs. Crowl, 245 Pa. 554, affirming 52 Pa. Super. Ct. 539.

5. The Cold Storage Act of May 16, 1913, P. L. 216 (now replaced by the Act of June 26, 1919, P. L. 670), was declared constitutional and

a legitimate exercise of the police power of the State for the protection of the public health.

Section 16 provides, *inter alia*, that no butter which is held in cold storage for a longer period than nine months shall be sold, offered or exposed for sale. This is a proper exercise of the police power by the Legislature and the Dairy and Food Division (now the Bureau of Foods) will not be restrained by the Courts from enforcing it. *Nolan vs. Jones*, 263 Pa. 124, affirming 67 Pa. Super. Ct. 430.

6. General Food Laws:

(a) Act of May 13, 1909, P. L. 520, is constitutional.

Com. vs. Pflaum, 50 Pa. Super. Ct. 55, affirmed in 236 Pa. 294.

Com. vs. Fulton, 263 Pa. 332, affirming 70 Pa. Super. Ct. 95.

(b) Act of June 26, 1895, P. L. 317.

This act was replaced and repealed by the Act of June 1, 1907, P. L. 386, which in turn was replaced and repealed by the existing law, viz: the Act of May 13, 1909, P. L. 520, but the decisions under these repealed statutes are important for the principles stated and the reasoning of the Courts.

The Act of June 26, 1895, P. L. 317, was held constitutional in

Com. vs. Curry, 4 Pa. Super. Ct. 356.

and

Com. vs. Kevin, 202 Pa. 28, but in

Com. vs. Kebort, 212 Pa. 289, was declared unconstitutional so far as it related to liquors and other drinks, on account of defective title.

(c) Act of June 1, 1907, P. L. 386.

Certain provisions of this act were declared unconstitutional in the cases of

Com. vs. Dougherty, 39 Pa. Super. Ct. 328.

and

Com. vs. Kephart, 39 Pa. Super. Ct. 524.

7. Constitutionality of the office of Dairy and Food Commissioner.

Com. ex rel vs. Warren, 217 Pa. 163.

8. The provisions of food laws and the practice of the agents of the Dairy and Food Commissioner in relation to the enforcement of food laws do not violate Art. III, Sec. 27, of the state constitution in relation to inspection of merchandise.

Com. vs. Wilson, 9 Del. 357.

See also:

Com. vs. Arrow, 32 Pa. Super. Ct. 1.

Com. vs. Spencer, 28 Pa. Super. Ct. 301.

Com. ex rel vs. Warren, 217 Pa. 163.

Inspection involves necessarily the power of present condemnation of the articles inspected in so far as such articles do not conform to a given standard. Inspection operates upon things; our food laws operate upon persons. Dairy and Food Agents have no power under any of our laws to seize and condemn any article of merchandise. The remedy provided in these laws is by prosecution of the person offending; the

law never proceeds against the thing which is adjudged illegal. In fact there is never a judicial condemnation of any article of merchandise. The judgment of the courts is always against the person.

RULES OF CONSTRUCTION OF FOOD LAWS.

A. General Rules.

1. *All the food laws contain penalties for violations of their provisions and are, therefore, what are commonly called penal statutes. But these laws, nevertheless, are entitled to a liberal construction, and not a strict construction.*

A "strict construction" is a close adherence to the liberal or textual interpretation, and a case is excluded from its operation unless the language of the statute clearly includes it.

36 Cyc. 1172-3.

Lagler vs. Bye, 42 Ind. App. 592.

A statute liberally construed may be extended to include cases clearly within the mischief to be remedied, unless such construction does violence to the language used.

36 Cyc. 1172-3.

Lagler vs. Bye, *Supra*.

Kellar vs. James, 63 W. Va. 139.

Laws enacted for the protection of human life, for the prevention of fraud and the remedy of public evils are remedial and entitled to liberal construction.

Nolan vs. Jones, 67 Pa. Sup. Ct. 430, affirmed in 263 Pa. 124.

36 Cyc. 1173 et seq.

A statute may be remedial and yet have penal provisions. In such case there is no impropriety in putting a literal construction on a penal clause, and a liberal construction on a remedial clause in the same Act.

Short vs. Hibbard 2 Bing. 349.

Stull vs. Reber, 215 Pa. 156.

Com. vs. Shaleen, 215 Pa. 595.

Bechtel's Election, 39 Pa. Super. Ct. 3082.

Com. vs. Kevin, 202 Pa. 23.

In the case of *Stull vs. Reber, Supra*, Chief Justice Mitchell in speaking of the Act of June 18th, 1895, P. L. 203, requiring the exclusion from the public schools of children who have not been vaccinated, says (pg. 163) :

"One expression in the opinion of the Court below, and in some of the cases cited in the argument, requires a passing note. The Act is not a penal statute. It is a broad general Act relating to the health of the whole population of the Commonwealth. It is not, therefore, to be construed or administered by the rigid technical rules applicable to penal laws, but fairly according to its intent, neither narrowing it to the letter, to the exclusion of cases clearly within such intent, nor stretching it beyond its legitimate scope to cover matters not clearly meant to be included. It is an Act touching very closely common rights

and privileges and, therefore, specially requiring a common sense administration."

In *Com. vs. Kevin*, 202 Pa. 23, in constructing the General Food Act of June 26, 1895, P. L. 317, Justice Mestrezat says (pg. 27) :

"The object of the statute is to protect the public health by securing pure food and to prevent fraud and deception in the manufacture and sale of adulterated articles of food. The purpose of the legislature in the passage of the Act is most commendable, and the statute should receive a construction by the Courts that will fully and effectively accomplish the object of its enactment."

2. *The several food laws make the sale, etc., of adulterated or misbranded foods an offense, and hence the intent of the offender is immaterial.*

In *Com. vs. Weiss*, 139 Pa. 247, in speaking of the Oleomargarine Act of May 21, 1885, P. L. 22, Justice Clark, delivering the opinion of the Supreme Court, says, p. 250, et. seq.:

"Guilty knowledge or guilty intent is, in general, an essential element in crimes at the common law, but statutes providing police regulations, in many cases make certain acts penal, where this element is wholly disregarded. The distinction is thus laid down in 3 Greenl. Ev. Sec. 21: 'The rule,' (i. e., that ignorance of fact will excuse) 'would seem to hold good in all cases where the act, if done knowingly would be malum in se. But where a statute commands that an act be done or omitted, which in the absence of such statute, might have been done or omitted without culpability, ignorance of the fact or state of things contemplated by the statute it seems will not excuse its violation.' * * * * * Whether a criminal intent or a guilty knowledge, is a necessary ingredient of a statutory offense, therefore, is a matter of construction."

See also:

Com. vs. Cciler, 20 Pa. Super. Ct. 260.

In re Carlson's License, 127 Pa. 330.

Com. vs. Zelt, 138 Pa. 626.

Com. vs. Sellers, 130 Pa. 32.

Com. vs. Holstcin, 132 Pa. 351.

Wharton's Crim. Law, Sec. 87 and 88.

That the purchaser knew what he was buying and was not deceived, where the article sold was adulterated or misbranded will not excuse the defendant or avail as a defense.

Com. vs. Hupnal, 4 Pa. Super. Ct. 312.

The case of *Com. vs. Huffnal* was reversed on appeal to the Supreme Court, on another point, but the principle above stated was in effect affirmed.

Com. vs. Huffnal, 185 Pa. 381.

3. *If the ingredient added to a food is poisonous or injurious to health, it is not necessary that it should be added in such quantity or to such extent that the mixture or compound sold as food is rendered poisonous or injurious to health.*

Com. vs. Kevin, 202 Pa. 23, affirming 18 Pa. Super. Ct. 414.

The Kevin case was decided under the general food Act of June 26th, 1895, P. L. 317, since repealed, but the language of existing laws upon the same subject is the same as that in Act of 1895.

4. *Construction of Food Laws relative to duty of Dairy and Food Commissioner as to enforcement.*

In re Pure Food Law Application.

11 Dist. Rep. 423.

Opinion by Elkin, Attorney General.

B. Rules in Construting Specific Acts.

1. *Construction of Vinegar Act of May 21, 1901, P. L. 275.*

Nothing in this act prohibits the sale of vinegar where the color is incidentally imparted to the finished product in the process of manufacturing from the original base. Com. vs. Terry and Hansell, 25 D. R. 575.

Pure cider vinegar must be made exclusively of pure apple juice and must contain no foreign substances, drugs or acids, not even water added in the process of manufacture. Com. vs. Burtnett, 58 Pa. Super. Ct. 604.

2. *Construction of Oleomargarine Act of May 29, 1901, P. L. 327.*

The Act of May 29th, 1901, provides inter alia: "That no person, firm, or corporation shall, by himself, herself, or themselves, or his her or their agent, servant or employe, nor shall any officer, agent, servant or employe of any person, firm, or corporation manufacture, sell, ship, consign, offer for sale, expose for sale or have in possession with intent to sell, oleomargarine, butterine, or any similar substance * * * * unless such person, firm, or corporation shall have first obtained a license and paid a license fee as hereinafter provided; nor unless the said article, product or compound * * * * shall be made and kept free from all coloration or ingredients causing it to look like yellow butter," &c.

Under this provision of the law, in *Com. vs. Mellet* 27 Pa. Super. Ct. 41, it was decided by the Superior Court, that upon an indictment for selling oleomargarine made or colored so as to resemble or be in imitation of yellow butter, a conviction may be sustained although there is no evidence of the artificial coloration of the oleomargarine by the addition thereto in the process of manufacture or afterwards, of any substance which had no other function than to cause it to resemble and be in imitation of yellow butter.

See also:

Com. vs. Caulfield, 27 Pa. Super. Ct. 279.

Under these decisions what is known as naturally colored oleomargarine was understood to be prohibited in Pennsylvania. But there remained some question as to what was meant by "yellow butter" in the Act, that oleomargarine must not imitate or resemble. It was contended that oleomargarine could still be sold that was of a yellow tint or tinge, and did not resemble or imitate the deeper yellow shades of June butter.

But the meaning of the language of the Act prohibiting yellow oleomargarine has recently been settled by two decisions of our Superior Court, viz:

Com. vs. Clewell, 49 Pa. Sup. Ct. 389.

and

Com. vs. Ignatavig, 49 Pa. Sup. Ct. 397.

In the case of *Com. vs. Clewell*, Henderson, J., delivering the opinion of the Superior Court, March 1, 1912, says:

"The defendant was convicted on an indictment charging him with selling oleomargarine which was not 'made and kept free from all coloration and ingredients causing it to look like yellow butter' in violation of the Act of May 29, 1901, P. L. 327. The question involved is thus stated: 'Whether the Act of Assembly of May 29, 1901, P. L. 327, Section 1, prohibiting the sale, manufacture, etc., of oleomargarine, which shall be in imitation of yellow butter produced from pure, unadulterated milk or cream of the same with or without coloring matter, means any shade or tint of yellow, and not what is commercially known as yellow butter. In other words, is yellow butter in the Act synonymous with any shade of butter yellow?'"

"In the argument of the appellant's counsel the statement is made that the only issue is, whether the oleomargarine sold by the defendant contained coloring matter or ingredients, causing it to look like yellow butter produced from pure, unadulterated milk, or cream of the same, with or without coloring matter. The position taken by the appellant is 'that the yellow butter named in the Act has reference to a certain standard of yellow butter which is the natural butter made in the month of June and which assumes a rich yellow color, but that natural butter made at any other time of the year falls below this standard of color.' It is also contended that butter made at other times of the year than the month of June is generally artificially colored to resemble butter made in the month of June and that, therefore, butter so colored becomes a standard of the yellow butter to which the Act of Assembly refers, and that the defendant should have been permitted to offer in evidence a sample of artificially colored butter for the purpose of showing that the oleomargarine which he sold was not of that color. The issue thus presented is within narrow compass. The position of the defendant asks us to declare that when the legislature speaks of 'yellow butter' it means butter having the color of that product made in the month of June, but we are unable to find either in the words of the statute or from a consideration of the reasons leading to its enactment any warrant for such construction. As has been repeatedly stated the principal object of the Act was to prevent deception by dealers in oleomargarine, and it would be a remarkable inference that care was only exercised toward the safeguarding of the public against imposition as to butter made during one-twelfth of the year. Witnesses are not necessary to show that butter is not all of the same color whether made in the month of June or at any other time. Different shades of yellow appear in its production contingent on the breed of cows, feed used, the time of year in which it is made and the process of manufacture, and when the phrase 'yellow butter' is used we think the legislature intended to describe the general color inhering in that product. Any

other construction would open every market to the sale of oleomargarine made in imitation of butter and no prohibition would exist except as to the imitation of the highest natural color of butter or of butter colored in imitation of it. This would defeat the very purpose of the Act."

See also:

Com. vs. McCann, 14 Pa. Super. Ct. 221.
Com. vs. Van Dyke, 13 Pa. Super. Ct. 484.

Serving oleomargarine with meals.

In Com. vs. Handley, 7 Pa. Super. Ct. 356, it is held that a public eaterer, who, for gain, furnishes oleomargarine as a part of a meal to his guests, is subject to the penalty provided by law.

In Com. vs. Miller, 131 Pa. 118, the Supreme Court construed the the Act of May 21, 1885, P. L. 22, to apply to a restaurant-keeper furnishing oleomargarine to a customer as part of a meal.

This is now provided for and regulated by Sections 2 and 3 of the Act of May 29, 1901, P. L. 327, as amended.

3. *Construction of second offense clause in Oleomargarine Act of May 29, 1901, P. L. 327.*

Com. vs. McDermott, 37 Pa. Super. Ct. 1, reversed in 224 Pa. 363.

See also:

Com. vs. Neill, 16 Pa. Super. Ct. 210.

This latter case was, however, under the Act of 1889, and is not applicable to the present Act of May 29, 1901.

4. *Construction of Act of May 23, 1893, P. L. 112, in relation to use of oleomargarine in charitable and penal institutions.*

Com. vs. Webster, 13 Dist. Rep. 199.

Oleomargarine in Charitable Institutions.

28 County Court Rep. 290.

5. A prosecution under the Ice-Cream Act of March 24, 1909, P. L. 63, may be brought by any citizen. It is not necessary that it shall be commenced by the Dairy and Food Commissioner.

Com. vs. Crowl, 245 Pa. 554, affirming 52 Pa. Super. Ct. 539.

6. Construction of Pure Food Act of May 13, 1909, P. L. 520.

This Act does not embrace coffee used as a beverage or drink.

Com. vs. Eirhorn, 24 D. R. 708.

Nor English walnuts sold in the shell as recently received.

Com. vs. Ferry, 21 D. R. 541.

The term food includes candy. It is unlawful to use gelatine, to which sulphur dioxide has been added, in the manufacture of candy.

Com. vs. Pflaum, 236 Pa. 294, affirming 50 Pa. Super. Ct. 55.

The Act of May 13, 1909, P. L. 520, defines "food" to be not only every article used as food for man; but also every article "entering into the composition of or intended for use as an ingredient in the preparation of food for man." The sale of a earning compound, which

contains 94.93% of boric acid (the use of which in food is prohibited in Section 3 of the Act), and only 5.07% of salt, to be used in canning all kinds of fruit and vegetables, is an adulteration of "food" as defined in Section 2 of the Act.

Com. vs. Fulton, 70 Pa. Super. Ct. 95, affirmed in 263 Pa. 332.

7. Construction of Milk and Cream Act.

A city ordinance in conflict with the Act of June 8, 1911, P. L. 712, Section 1, is void.

Frantz et al., vs. City of Allentown, 6 Lehigh Co. L. J. 173.

A prosecution cannot be maintained against a milk dealer for selling milk containing less than three and one-fourth per cent of butter-fat as prescribed by Act of June 8, 1911, P. L. 712, if he files affidavit prescribed by Act of June 2, 1915, P. L. 735, setting forth that milk in question is not below three per cent of butter-fat and analysis shows that it is not below three per cent. Affidavit is in time if filed with magistrate at time of hearing.

Com. vs. Schatz, 14 Del. 397.

8. Construction of Cold Storage Act of May 16, 1913, P. L. 216 (now replaced by Act of June 26, 1919, P. L. 670).

The sale of frankfurter or bologna sausage, in the manufacture of which were used beef trimmings which had been in cold storage more than four months, is a violation of Section 16.

Com. vs. F. L. Mitterlehuer, 22 Dauphin Co. 61 (1919).

EVIDENCE OF ADULTERATION.

It is competent to show by evidence the proportion of moisture found in the butter of commerce, and where such evidence shows 16% was recognized by dealers as the maximum amount to be found in butter, and the butter sold contained 31% moisture, it is not error for the court to charge the jury that if it finds 16% the accepted maximum and 31% the proportion in the butter sold, that the product was adulterated.

Com. vs. Keefer, 71 Pa. Super. Ct. 460.

EVIDENCE IN FOOD CASES.

While in food cases it is usual to offer in evidence a sample of the food alleged to be adulterated or misbranded, yet such course is not essential to conviction.

Com. vs. Caulfield, 27 Pa. Super. Ct. 279.

In some cases it is impossible to keep samples from time of purchase until time of trial because of the perishable nature of the commodity. This is true especially in the case of milk.

On the trial of an indictment for selling oleomargarine made in "imitation of yellow butter," an offer to introduce a sample of what was alleged to be yellow butter for the purpose of establishing a standard of comparison without offering to show the proposed standard was in fact butter, was clearly admissible and properly rejected by the court.

An offer to introduce the sample of artificially colored oleomargarine is also irrelevant.

Com. vs. Clewcell, 49 Pa. Sup. Ct. 389.

Where the defendant offers evidence to show that oleomargarine has necessarily a yellow tint, the Commonwealth may introduce in evidence a package of white oleomargarine not only for the purpose of showing that oleomargarine is not necessarily yellow, but also as a standard of comparison with the oleomargarine bought from the defendant, which was shown to have ingredients that would account for its yellow color.

Com. vs. Ignatavig, 49 Pa. Sup. Ct. 397.

Where in a prosecution under the Ice-Cream Act of March 24, 1909, P. L. 63, it is shown that a pint of ice-cream for the sale of which the defendant was prosecuted had been analyzed and found deficient in butter-fat, it is not error to exclude the evidence of experts to show the samples taken from other parts of the same can from which the pint was taken, might show different percentages of butter-fat.

Com. vs. Crowl, 245 Pa. 554, affirming 52 Pa. Super. Ct. 539.

EVIDENCE OF SALE.

Sale is a word of precise legal import. It means at all times a contract between the parties to pass rights of property for money which the buyer pays or promises to pay to the seller for the thing bought or sold.

Williamson vs. Berry, 8 How. (U. S.) 544.

Huthmacher vs. Harris' Admr., 38 Pa. 498.

The elements of a Sale are:

1. Parties competent to contract.
2. Mutual assent.
3. A thing, the absolute or general property, which is transferred from the seller to the buyer.
4. A price in money paid or promised.
1. Benj. on Sales, Sec. 1.

As to what constitutes a Sale, see:

Com. vs. Leslie, 20 Pa. Super. Ct. 529, where it is held that a person may be convicted of selling oleomargarine unlawfully colored in imitation of butter, in violation of the Act of May 5, 1899, P. L. 241, where it appears that he solicited orders for the article and received pay for the same at the time the orders were given; that he sent the orders, together with the money to a manufacturer in another state; that the manufacturer packed the several parcels ordered in one crate or box and addressed and sent the same to the dealer as "agent," and that the latter distributed the parcels to the several persons who had ordered them. In such it is immaterial that the dealer did not receive a commission from the manufacturer.

Where bottles or packages are fastened together and are marked or packed in a large box, barrel, crate or other receptacle, the outside box,

bundle or receptacle and not any box or package contained therein constitutes the original package, and this is equally true although each bottle or package is separately wrapped in paper and labeled "original package," with the name of the importer.

In *Com. vs. Butterfield*, 46 Pa. Super. Ct. 380, it was decided that on the trial of an indictment for selling oleomargarine without a license a conviction will be sustained where the evidence shows that the defendant took orders in the place where he resided, from various parties for oleomargarine, in quantities varying from five to ten pounds, to each individual; that he sent these orders to a dealer in another state; that the dealer put up the orders in separate packages writing the names of the respective purchasers on the packages; that the packages were placed in wooden boxes, shipped to the defendant who delivered them to the different purchasers; that the defendant paid the dealer twenty cents a pound for the oleomargarine, and received from his customers twenty-two cents a pound, and that the difference was used for freight and charges, and this was known to the customers.

In *Com. vs. Paul*, 170 Pa. 284, the Supreme Court discusses the question of what constitutes an "original package" within the meaning of the commerce clause of the federal constitution.

See also:

Com. vs. Schollenberger, 156 Pa. 201.

CONVICTION OF A PROPRIETOR ON PROOF OF SALE BY A SERVANT, AGENT OR EMPLOYEE.

A master is responsible criminally for an illegal act of his agent, servant or employe, where such act is in the usual course of his employment.

Com. vs. Houston, 3 Dist. Rep. 686.

1 Wh. Crim. Law, Sec. 247.

Com. vs. Park, 1 Gray (Mass.) 553.

Com. vs. Nichols, 10 Metcalf 259.

Com. vs. Morgan, 107 (Mass.) 199.

Com. vs. Boston R. R., 126 (Mass.) 61.

See:

Com. vs. Johnston, 2 Pa. Super. Ct. 317.

Zeigler vs. Com., 22 W. N. C. 111.

Com. vs. Junkin, 170 Pa. 202.

Com. vs. Willard, 9 W. N. C. 524.

Where the defendant is a corporation it is better to indict the active members of the corporation as individuals, but in such case the evidence must show some active participation by the defendant in the illegal act.

EVIDENCE OF GOOD CHARACTER NOT ADMISSIBLE IN A FOOD CASE.

The reason for this rule is that the food laws do not imply any criminal intent. The laws make the sale of an adulterated or misbranded

article of food an offense, whether the defendant knew the article to be adulterated or misbranded or not.

Com. vs. Weiss, 139 Pa. 247.

Hence the rule (allowing defendant to introduce character witnesses), has little or no application to such laws. They are penal acts which have no moral quality, but are *mala prohibita*.

Com. vs. Nagle, 157 Mass. 554.

16 Cyc. 1284, note 98.

Com. vs. Kolb, 13 Pa. Super. Ct. 347.

In introducing proof of character, regard must be had to the nature of the offense charged against the party, and inquiry ought to be made as to the reputation of the individual for habit of life or mode of thought, feeling or action inconsistent with his alleged guilt or innocence.

Com. vs. Irvin, 1 Clark (2 Pa. L. J.) 329.

PLEADING AND PRACTICE

A. *Indictment.*

“Every indictment shall be deemed sufficient and good in law which charges the crime substantially in the language of the Act of Assembly prohibiting the crime and prescribing the punishment, if there be any such, or if at common law, so plainly that the nature of the offense charged may be easily understood.”

11th Sec. of Crim. Procedure, Act of 1860.

Criminal proceeding is no longer the technical thing it was. The Courts now look more to substantial justice than to artificial nicety.

Com. vs. Keenan, 67 Pa. 203.

Com. vs. Wood, 2 Pa. Super. Ct. 42.

Com. vs. New Bethlehem, 15 Pa. Super. Ct. 158.

Staeger vs. Com., 103 Pa. 469.

(1) *Suggestions as to indictment.*

State the offense as nearly as possible in the language of the Act of Assembly.

Avoid the use of the disjunctive “or” in describing the offense. Substitute “and;” although an indictment will not always be quashed because of the use of “or.”

See:

Com. vs. McDermott, 37 Pa. Super. Ct. 1, reversed in 224 Pa. 363.

Avoid the use of the word “wilfully” or “knowingly” in all food indictments. It is sufficient to state that the defendant did unlawfully, &c. By using the word wilfully you render it impossible to convict unless the Commonwealth proves guilty knowledge or intent.

(2) *Motions to Quash.*

In the absence of a statute, defects in the information or complaint upon which the committing magistrate acted, are not, after indictment

found, ground for a motion to quash where the information charges an offense.

Com. vs. Brennan, 193 Pa. 567.

Com. vs. Dingman, 26 Pa. Super. Ct. 615.

22 Cyc. 418 and note 68.

(3) *Duplicity in Indictment.*

Where a statute makes two or more distinct Acts connected with the same transaction indictable, each one of which may be considered as representing a phase of the same offense, it is not regarded as duplicity to join the same in one count.

Wharton's Chim. Plead. 257.

Com. vs. Miller, 107 Pa. 276.

Com. vs. Mentzer, 162 Pa. 646.

Com. vs. Kolb, 13 Pa. Super. Ct. 347.

Com. vs. Sober, 15 Pa. Super. Ct. 520.

Jillard vs. Com., 26 Pa. 169.

Com. vs. Schoenhutt, 3 Phila. 20.

Thus, it may be charged that a defendant offered for sale, exposed for sale, had in his possession with intent to sell and sold, in the same count of the indictment.

Com. vs. Young, 21 D. R. 548.

(4) *Bills of particulars.*

A bill of particulars is not a matter of right, but is addressed to the discretion of the Court, and will be allowed only to prevent injustice and surprise.

Com. vs. Buccieri, 153 Pa. 535.

Com. vs. Powell, 23 Pa. Super. Ct. 370.

A bill of particulars will never be required to compel the Commonwealth to disclose the evidence of the crime charged in the indictment.

Com. vs. Buccieri, Supra.

Com. vs. Lovegrove, 10 York 159.

In *Com. vs. Applegate*, 1 Dist. Rep. 127, the Court refused a rule for the residences of the witnesses for the Commonwealth endorsed on the indictment.

(5) *The Court will not require the Commonwealth to deliver over to the defendant a portion of the sample which is the basis of the prosecution.*

See opinion of Bell, J., in Quarter Sessions of Blair Co. in Com. vs. Koller et al., No. ——, October Sessions, 1904.

In re rule to show cause why portion of sample taken by the Commonwealth should not be turned over to defendants for analysis.

By the Court:

"So far as the rule for a bill of particulars is concerned, as ruled by the Supreme Court in Commonwealth vs. Powell, 23 Super. Ct. 372, a bill of particulars in a criminal case is not a matter of right, but is only an appeal to the sound discretion of the Court. My recollection

is that in some of the pure food indictments in cases tried in this Court there was simply an allegation in the indictment that the pure food act had been violated, without specifying the particular violation. I am inclined to think that that indictment was perfectly good. We have our Act of Assembly which provides that an indictment shall be deemed sufficient which simply follows the words of the Act of Assembly, and if this indictment had simply followed the words of the Act of Assembly, and been in the general form with which we found other indictments, we would feel it but right and proper that the Commonwealth should specify the particular article of food which was supposed to be adulterated, and at least specify in a general way how that particular article of food was adulterated; but in the present instance the particular article of food is specified, to wit, chocolate, and there is a general statement as to how it is adulterated.

"I think we will agree on a moment's reflection that the rulings of the appellate courts on this subject are perfectly right and proper. The authority cited by Mr. Baldridge is not analogous authority at all. In the first place, as stated by Mr. Woodward, the physical examination to which the plaintiff is compelled to subject himself is always made—and I am speaking only as to the orders of—is always in the presence of the physician of the plaintiff. I have drawn frequent orders compelling plaintiffs in damage cases to submit to physical examinations, but I was always careful to provide that the physician of the plaintiff should be present so that no unfair advantage could be taken of the plaintiff, and that everything that was done there was done in the presence of the physician of the plaintiff. But, it seems to me that the endeavor to liken a civil proceeding to a criminal proceeding is fallacious, and that is the vice of the offer. In a civil proceeding the plaintiff may be compelled to subject himself to a physical examination. At the same time, he has the mutual and coördinate right of compelling defendant to disclose his case. Not so in a criminal case. The defendant can hold all the papers in his possession, and there is no power to compel him to produce them. He can sit on the witness stand and say, 'I have a paper at home,' and the Court is powerless to make him produce evidence to establish his guilt. That is one reason. In the second place, a civil suit is tried on the weight of the evidence. Each party comes in with an equal right to be heard as to the measure of proof, but in a criminal suit the burden is on the Commonwealth to establish the case beyond a reasonable doubt, and these maxims of ours about the reasonable doubt that the jury must come to the firm, unwavering conviction that the defendant is guilty, have come to us from times when judges were wont to hang a man for stealing a loaf of bread. Now I do not say in the present criminal procedure that we should get away from those old maxims, but I do say that while we adhere to these old maxims (which we adopted when they hung men for stealing a loaf of bread), such maxims ought not to be applied against the Commonwealth on the one side, and then, on the other hand, the Commonwealth be compelled to disclose all their case; and the absence of precedent to my mind is strong proof that there is no warrant for a Court compelling the Commonwealth to submit their evidence in advance to the defendant.

"It does seem to me that the able criminal lawyers who have defended criminals charged with grave offenses, if there was any warrant for such a precedent, would have brought it in force. Take for

instance a murder case. The Commonwealth claims that they found on the prisoner a bloody shirt, and that the blood stains are human blood, not chicken blood, or blood which he received butchering a hog, but human blood; now we all know that the experts on the part of the defense coach the lawyers for the defense while they cross-examine the experts of the Commonwealth, but I do not think there would be any warrant for a defendant charged with murder to say 'you must tear that shirt in two, and you must give my chemist one-half of the alleged blood stains so that they can prepare a defense,' or, to put it more mildly, that they can have the alleged blood stains analyzed. I do not know of any such precedent, and the very fact that Mr. Baldridge, after diligent search, has been unable to find one, to my mind is proof that here is no warrant to force the Commonwealth to produce the evidence they are going to submit. As I said before, in a civil suit, under certain equitable rules, each side must apprise the other side of what evidence they are going to use, but I do not think it would be fair to say to the Commonwealth, you must give the defendant all your side of the case so that he can examine and ransack it, and at the same time allow the defendant to keep his mouth shut. It seems to me that would be giving the defendant an unfair advantage, and it seems to me it would be unfair to compel the Commonwealth to allow a defendant to subject their samples to examination in advance, and I will overrule the application for the compelling of the production of such samples.

"As to experiments in open court, I do not know to what extent I will go about a matter of that kind. I did rule in the formaldehyde cases, where Mr. Hicks wanted to take a drink of the preservative, and wanted the court to take a drink of it, and let the jury take a drink of it, I did rule that he could take a drink, but the court would not, and would not have the jury do so. Mr. Hicks was going to turn the court into a laboratory, and I think we said we would not have any laboratory here in court. I do not know to what extent I would go if there was any effort on the part of the defendant to examine samples by microscopic tests—I will leave that matter open."

B. *Sentence.*

Most of the food laws fix a maximum and minimum penalty for their violation.

The construction placed upon these clauses of the several acts by the department and by most of the Courts of the State is that in thus fixing a maximum and minimum sentence, the Legislature took away from the Court the discretion to suspend sentence. It will be observed in this connection, that as a general rule the Legislature in penal Acts fixes no minimum, hence the Court may suspend punishment entirely—but in these police regulations wherein a minimum sentence is fixed, the court must conform to the Act and inflict at least the minimum penalty.

Selling, offering for sale, having in possession with intent to sell and exposing for sale, where these occur as a part of a single transaction, are not separate offenses for which penalties can be multiplied.

The sale in such cases embraces all that has gone before and leads up to it, as necessary incidents and constitutes but one complete offense. Com. vs. Roberts, 152 Pa. 174.

